

ATTACHMENT 75

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS) MDL No. 2002

)

ANTITRUST LITIGATION) 08-MD-02002

)

THIS DOCUMENT RELATES TO:)

)

All Actions)

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The Videotaped Deposition of CRAIG WILLARDSON,
taken before Beth C. Radtke, C.S.R. within and for
the State of Illinois, pursuant to the provisions of
the Federal Rules of Civil Procedure of the United
States District Court, pertaining to the taking of
depositions, taken at 224 South Michigan Avenue,
Chicago, Illinois, commencing at the hour of
approximately 9:37 a.m. on the 6th day of June, 2014.

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<p>1 APPEARANCES</p> <p>2</p> <p>3 STRAUS & BOIES, LLP</p> <p>By Mark J. Schirmer</p> <p>4 1661 International Place Drive</p> <p>Suite 400</p> <p>5 Memphis, Tennessee, 38120</p> <p>901-818-3146</p> <p>6 mschirmer@straus-boies.com</p> <p>Appeared on behalf of the Indirect Purchaser</p> <p>7 Plaintiffs;</p> <p>8</p> <p>EIMER STAHL, LLP</p> <p>9 By Ms. Vanessa Jacobsen</p> <p>Mr. Arin Aragona</p> <p>10 224 South Michigan Avenue</p> <p>Suite 1100</p> <p>11 Chicago, Illinois 60604-2516</p> <p>312-660-7600</p> <p>12 vjacobsen@eimerstahl.com</p> <p>aaagona@eimerstahl.com</p> <p>13 Appeared on behalf of Moark, LLC, Norco Ranch,</p> <p>Inc., and Craig Willardson.</p> <p>14</p> <p>GUSTAFSON GLUEK, PLLC</p> <p>By Mr. Daniel Headlund</p> <p>16 120 South 6th Street</p> <p>Suite 2600</p> <p>17 Minneapolis, Minnesota 55402</p> <p>612-333-8844</p> <p>18 dheadlund@gustafsongluek.com</p> <p>Appeared on behalf of Direct Purchaser</p> <p>19 Plaintiffs;</p> <p>20</p> <p>PEPPER HAMILTON, LLP</p> <p>21 By Mr. Evan Davis</p> <p>3000 Two Logan Square</p> <p>22 Philadelphia, Pennsylvania 19103-2799</p> <p>215-981-4245</p> <p>23 davisew@pepperlaw.com</p> <p>Appeared on behalf of United Egg Producers and</p> <p>24 United States Egg Marketers.</p>	<p>1 INDEX</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 CRAIG A. WILLARDSON</p> <p>EXAMINATION BY MR. SCHIRMER 7</p> <p>5 EXAMINATION BY MS. JACOBSEN 191</p> <p>FURTHER EXAMINATION BY MR. SCHIRMER 195</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 Exhibit 1 13</p> <p>Exhibit 2 35</p> <p>9 Moark-IPP-00228319 - 321</p> <p>Exhibit 3 37</p> <p>10 MOARK-IPP-0026283</p> <p>Exhibit 4 39</p> <p>11 MOARK0004377 - 4378</p> <p>Exhibit 5 41</p> <p>12 MOARK0005475 - 5476</p> <p>Exhibit 6 43</p> <p>13 MOARK00017526</p> <p>Exhibit 7 48</p> <p>14 MOARK0036917 - 918</p> <p>Exhibit 8 49</p> <p>15 MOARK0036622 - 36623</p> <p>Exhibit 9 56</p> <p>16 MOARK0036602 - 36605</p> <p>Exhibit 10 59</p> <p>17 MOARK-IPP-028504 - 505</p> <p>Exhibit 11 67</p> <p>18 MOARK-IPP-0002193 - 2194</p> <p>Exhibit 12 71</p> <p>19 MOARK0030736 - 743</p> <p>Exhibit 13 72</p> <p>20 MOARK0005547 - 5548</p> <p>Exhibit 14 73</p> <p>21 MOARK0007549-7563</p> <p>Exhibit 15 80</p> <p>22 MOARK0037089</p> <p>Exhibit 16 81</p> <p>23 MOARK00037086</p> <p>Exhibit 17 87</p> <p>24 MOARK208957 - 58</p>
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 STINSTON LEONARD STREET, LLP</p> <p>By Mr. Peter Schwinger</p> <p>4 1775 Pennsylvania Avenue NW</p> <p>Suite 800</p> <p>5 Washington, D.C. 20006</p> <p>202-785.9100</p> <p>6 peter.schwinger@stinsonleonard.com</p> <p>Appeared on behalf of Michael Foods;</p> <p>7</p> <p>8 PORTER, WRIGHT, MORRIS & ARTHUR, LLP</p> <p>By Ms. Jetta Sandin</p> <p>9 1900 K Street NW</p> <p>Suite 1110</p> <p>10 Washington, D.C. 20006</p> <p>202-778-3020</p> <p>11 jsandin@porterwright.com</p> <p>Appeared on behalf of Rose Acres Farms.</p> <p>12</p> <p>13 *****</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 INDEX</p> <p>2 Exhibit 18 94</p> <p>MOARK0037125-37127</p> <p>3 Exhibit 19</p> <p>MOARK-IPP-0028024 - 028 98</p> <p>4 Exhibit 20 102</p> <p>5 Exhibit 21 104</p> <p>MOARK0016849 - 50</p> <p>6 Exhibit 22</p> <p>MOARK0016851 - 52</p> <p>7 Exhibit 23 109</p> <p>MOARK00000101</p> <p>8 Exhibit 24 114</p> <p>MOARK0000460</p> <p>9 Exhibit 25 115</p> <p>MOARK0016320</p> <p>10 Exhibit 26 117</p> <p>MOARK00036518</p> <p>11 Exhibit 27 120</p> <p>MOARK-IPP-027780 - 27781</p> <p>12 Exhibit 28 123</p> <p>MOARK00027417 - 425</p> <p>13 Exhibit 29 126</p> <p>MOARK0004559 - 4560</p> <p>14 Exhibit 30 129</p> <p>MOARK0017717 - 17718</p> <p>15 Exhibit 31 132</p> <p>MOARK0036344</p> <p>16 Exhibit 32 136</p> <p>UE0309830 - 9845</p> <p>17 Exhibit 33 138</p> <p>MOARK0034675 - 676</p> <p>18 Exhibit 34 162</p> <p>MOARK005746</p> <p>19 Exhibit 35 162</p> <p>MOARK-IPP-0029192 - 293</p> <p>20 Exhibit 36 163</p> <p>MOARK0038005</p> <p>21 Exhibit 37 169</p> <p>MOARK0025032</p> <p>22 Exhibit 38 190</p> <p>MOARK-IPP-0036451 - 454</p> <p>23 *****</p> <p>24</p>

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<p>1 THE VIDEOGRAPHER: My name is Barbara Rudolf</p> <p>2 representing Veritext. The date today is June 6,</p> <p>3 2014, and the time is approximately 9:37 a.m.</p> <p>4 This deposition is being held at the offices</p> <p>5 of Eimer Stahl, LLP, 224 South Michigan, in Chicago,</p> <p>6 Illinois. In Re: Processed Egg Products Litigation</p> <p>7 in the United States District Court, Eastern District</p> <p>8 of Pennsylvania. The name of the witness is Craig A.</p> <p>9 Willardson.</p> <p>10 At this time the attorneys will identify</p> <p>11 themselves and the parties they represent, after</p> <p>12 which our court reporter, Beth Radtke of Veritext,</p> <p>13 will swear in the witness and we can proceed.</p> <p>14 MR. SCHIRMER: Mark Schirmer of Straus &</p> <p>15 Boies on behalf of the indirect purchaser plaintiffs.</p> <p>16 MS. JACOBSEN: Vanessa Jacobsen on behalf of</p> <p>17 defendants Moark, LLC, and Norco Ranch, Inc., and the</p> <p>18 witness.</p> <p>19 MR. ARAGONA: Arin Aragona, also Eimer</p> <p>20 Stahl, LLP, on behalf of the witness, Moark, LLC, and</p> <p>21 Norco Ranch, Inc.</p> <p>22 MS. JACOBSEN: On the phone?</p> <p>23 MR. HEADLUND: Dan Headlund, Gustafson</p> <p>24 Gluek, on behalf of the direct purchaser plaintiffs.</p>	<p>1 worked at Moark?</p> <p>2 A. I did, yes.</p> <p>3 Q. Have you ever had your testimony taken</p> <p>4 before?</p> <p>5 A. Yes, I have.</p> <p>6 Q. How many times?</p> <p>7 A. Once.</p> <p>8 Q. What was the nature of that?</p> <p>9 A. It was a case where the company was a</p> <p>10 plaintiff in a fraud case.</p> <p>11 Q. Do you remember the name of the case?</p> <p>12 A. The defendant was Sonstegard Foods. Moark</p> <p>13 versus Sonstegard.</p> <p>14 Q. Do you remember where the case was?</p> <p>15 A. It was Los Angeles.</p> <p>16 Q. Was it federal or state court?</p> <p>17 A. State.</p> <p>18 Q. Did you have your testimony taken in court?</p> <p>19 A. A deposition.</p> <p>20 Q. How long ago was that?</p> <p>21 A. That was eleven years ago.</p> <p>22 Q. It's been a while.</p> <p>23 A. It's been a while.</p> <p>24 Q. You have some experience, but let's go over</p>
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<p>1 MR. DAVIS: Evan Davis from Pepper Hamilton</p> <p>2 on behalf of United Egg Producers and United States</p> <p>3 Egg Marketers.</p> <p>4 MR. SCHWINGLER: Peter Schwingler, Stinson</p> <p>5 Leonard Street, on behalf of defendant Michael Foods.</p> <p>6 MS. SANDIN: Jetta Sandin, Porter, Wright,</p> <p>7 Morris & Arthur, on behalf of defendant Rose Acres</p> <p>8 Farms.</p> <p>9 (Witness sworn.)</p> <p>10 CRAIG A. WILLARDSON</p> <p>11 having been first duly sworn, was examined and</p> <p>12 testified as follows:</p> <p>13 EXAMINATION</p> <p>14 BY MR. SCHIRMER:</p> <p>15 Q. Would you please state your full name for</p> <p>16 the record?</p> <p>17 A. Yes. My name is Craig A. Willardson.</p> <p>18 Q. What is your address?</p> <p>19 A. 5220 Avenida De Despacio in Yorba Linda,</p> <p>20 California.</p> <p>21 Q. How long have you lived in Yorba Linda?</p> <p>22 A. We've lived there twice. This time</p> <p>23 15 years. We were there previous to that.</p> <p>24 Q. So did you live there all the time you</p>	<p>1 some rules for today. Okay?</p> <p>2 A. Sure.</p> <p>3 Q. Number one, we're going to -- I'm going to</p> <p>4 be asking questions and you are going to be hopefully</p> <p>5 giving me answers; maybe, maybe not, I don't mean any</p> <p>6 disrespect by that. But during the course of the</p> <p>7 day, one of these two nice people is definitely going</p> <p>8 to say objection and they may say something else.</p> <p>9 Please let them say that and then answer the</p> <p>10 question. You can still answer the question if they</p> <p>11 object. The only time when you should not answer is</p> <p>12 if one of these two people tells you, Don't answer</p> <p>13 the question. Okay? Otherwise, I'm going to assume</p> <p>14 you're going to answer, and you should, and if they</p> <p>15 tell you not to, may I assume, sir, that you will</p> <p>16 follow your counsel's advice and be a good witness,</p> <p>17 and do what they tell you? Because I don't want do</p> <p>18 this every time.</p> <p>19 A. I will indeed.</p> <p>20 Q. Second, when we're talking today, I'll be</p> <p>21 trying to ask coherent questions. If they're not</p> <p>22 coherent or you don't understand something about it,</p> <p>23 just say, I don't understand, or if something seems</p> <p>24 -- a word seems off, I may -- say I don't understand</p>

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<p style="text-align: right;">Page 10</p> <p>1 that word, I don't understand what you mean by this, 2 and I will either say -- well, I'll try and give you 3 some clarification or I'll ask you to answer it based 4 on your particular understanding of the word. So any 5 time you have a question, something's unclear, say so 6 and we'll see if we can fix it. 7 Third, this is not an endurance contest. If 8 you need to take a break -- I'll try and take a break 9 every hour for -- just for my own purposes, but we'll 10 take breaks about once an hour. If you need a break 11 at any other time for any reason just say, I'd like 12 to stop and we'll do so. Do you understand that? 13 A. Yes. 14 Q. Fourth, that brings this up. If you -- when 15 you're going to answer a question today, although 16 it's on -- you're being taped or video recorded and 17 it's on a little CD, I guess. Beth here is going to 18 be taking it down, and you got to say yes or no or 19 maybe. She's got to hear something. She may be able 20 to say "witness nods," but that isn't nearly as good, 21 because what comes out of this basically when we use 22 it in court prior to the trial is we generally 23 provide a piece of the transcript, so they have to be 24 able to put that down. Do you understand that?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I retired from president and CEO of Moark, 2 LLC. 3 Q. And do you remember how long you had been 4 president and CEO of Moark, LLC? 5 A. Since January 1, 2006. 6 Q. And how long had you been employed by Moark 7 prior to that before that? 8 A. Six years. 9 Q. When did you first come to work for Moark, 10 2000? 11 A. Beginning of 2000. 12 Q. How did you come to work for Moark? 13 A. I was approached by the owners of Moark 14 production in 1999 about an opportunity in Southern 15 California. 16 Q. Did you live in Southern California at the 17 time? 18 A. I was in Northern California. 19 Q. Who did you work for at the time? 20 A. I worked for New Laid Foods, Inc. 21 Q. What is New Laid Foods, or what was it? 22 A. New Laid Foods is a value added egg co-op 23 member. 24 Q. You'll have to excuse me. What is value</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Yes. 2 Q. Okay. The next thing that I'm going to ask 3 of you is that you left me finish my questions. I'm 4 certain -- I'm certain you know more about this 5 subject matter than I do, and I'm certain you're 6 going to know what I am getting at sometimes. Let me 7 finish. There are two reasons for that. First, I 8 may not be asking what you think. Second, if you and 9 I talk over each other, she can't take it down and 10 she will eventually get angry at us and say, Don't do 11 that anymore, and we will both, you know, get 12 red-faced and not be very happy about it, but so in 13 addition to giving audible answers, let's try not to 14 talk over each other. I will make a promise to you 15 that I will do my level best not to talk over you. 16 If I do, I'll back off and I would ask you not to do 17 the same for me. 18 A. Very good. 19 Q. It's just courtesy, okay? Are you currently 20 employed? 21 A. No. 22 Q. What are you doing now? 23 A. I retired effective April 1st of last year. 24 Q. And what job did you retire from?</p>	<p style="text-align: right;">Page 13</p> <p>1 added egg co-op member? 2 A. Further processed. If you're familiar with 3 others in the industry that further process, break, 4 and process shell eggs into a liquid, frozen, aseptic 5 product. 6 Q. At the time you came to Moark, did it also 7 have a breaking operation? 8 A. It did. 9 Q. And I take it there came a time when Moark 10 sold that operation? 11 A. We did. 12 Q. And when was that? 13 A. We sold it in June of 2006. 14 Q. After you became president? 15 A. Yes. 16 MR. SCHIRMER: Do this as Exhibit 1. 17 (Exhibit No. 1 was marked as requested.) 18 BY MR. SCHIRMER: 19 Q. It is a color printout. Do you know what 20 this is, sir? 21 A. This looks like a page from our website. 22 Q. Have you seen it before? 23 A. Yes. 24 Q. So it was taken from what used to be on</p>

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<p style="text-align: right;">Page 14</p> <p>1 Moark's website?</p> <p>2 A. Yes.</p> <p>3 Q. It is not Bates stamped. It is</p> <p>4 www.moarkllc.com/about-us-mgmt.html, and it is a</p> <p>5 three-page document; it says one of three, two of</p> <p>6 three, three of three. On the first one, it has what</p> <p>7 looks like a picture of you right up there.</p> <p>8 A. That's me.</p> <p>9 Q. And it says that you had served as president</p> <p>10 since January 1, 2006. It says you were president of</p> <p>11 two other companies in the shell egg and value added</p> <p>12 egg business. You said New Laid. What was the other</p> <p>13 one?</p> <p>14 A. Olson Farms, Inc.</p> <p>15 Q. Where is Olson Farms, Inc., located?</p> <p>16 A. Olson Farms, Inc., was located in Southern</p> <p>17 California.</p> <p>18 Q. What happened to Olson Farms, Inc.?</p> <p>19 A. Olson Farms was -- it was sold off by the</p> <p>20 family owners.</p> <p>21 Q. Do you know who bought it?</p> <p>22 A. New Cal Foods of Northern California bought</p> <p>23 the bulk of the business in 1996.</p> <p>24 Q. Okay. Does New Laid Foods still exist?</p>	<p style="text-align: right;">Page 16</p> <p>1 A. 1979.</p> <p>2 Q. What was your -- your degree was in</p> <p>3 accounting?</p> <p>4 A. It was in accounting.</p> <p>5 Q. What was your position when you first came</p> <p>6 to Moark?</p> <p>7 A. It was general manager of the Moark Western</p> <p>8 Division, and president of Norco Ranch, Inc.</p> <p>9 Q. Now what does it mean -- what does it mean</p> <p>10 when you say general manager of the Western Division?</p> <p>11 A. I had responsibility for the Moark business</p> <p>12 located in the western part of the U.S.</p> <p>13 Q. How many divisions did Moark have at the</p> <p>14 time?</p> <p>15 A. Two.</p> <p>16 Q. Western and Eastern?</p> <p>17 A. Western and Midwest.</p> <p>18 Q. Okay. Did it ever obtain another set of</p> <p>19 companies that allowed it to have an Eastern</p> <p>20 Division?</p> <p>21 A. It did.</p> <p>22 Q. When was that?</p> <p>23 A. That was 2001.</p> <p>24 Q. Do you remember who the -- and you were the</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes.</p> <p>2 Q. Now you also -- it says you were also -- had</p> <p>3 various financial management positions at Denny's and</p> <p>4 worked in the audit department of Arthur Young &</p> <p>5 Company. Is that right?</p> <p>6 A. Yes.</p> <p>7 Q. How long did you work at Arthur Young?</p> <p>8 A. Almost five years.</p> <p>9 Q. What was the highest position you reached at</p> <p>10 Arthur Young?</p> <p>11 A. Supervising senior accountant.</p> <p>12 Q. You have your CPA?</p> <p>13 A. I do.</p> <p>14 Q. Have you maintained it all these years?</p> <p>15 A. No, I haven't.</p> <p>16 Q. Continuing education requirement at least?</p> <p>17 A. No.</p> <p>18 Q. When did you cease keeping your CPA up?</p> <p>19 A. After I left Denny's.</p> <p>20 Q. And that was when?</p> <p>21 A. That was in 1988.</p> <p>22 Q. Where did you graduate from?</p> <p>23 A. Brigham Young University.</p> <p>24 Q. And when did you graduate? What year?</p>	<p style="text-align: right;">Page 17</p> <p>1 general manager of the Western Division, which would</p> <p>2 be whatever companies and whatever subsidiaries or</p> <p>3 entities were in the west.</p> <p>4 A. Yes, exactly.</p> <p>5 Q. From 2000 until the end of 2005?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know who was the manager of the</p> <p>8 Midwest Division during that period of time?</p> <p>9 A. The Midwest Division was Bill Bradley.</p> <p>10 Q. And after Moark obtained an eastern group of</p> <p>11 companies, do you know who was the general manager in</p> <p>12 the east?</p> <p>13 A. It was Joe Fortin.</p> <p>14 Q. Did -- excuse me.</p> <p>15 What were your responsibilities as general</p> <p>16 manager of the Western Division?</p> <p>17 A. Overall responsibility for the production,</p> <p>18 processing, marketing of eggs in that area.</p> <p>19 Q. Did you -- when you say overall</p> <p>20 responsibility for the marketing, did that -- did</p> <p>21 that include supervising the salespeople who were in</p> <p>22 that area?</p> <p>23 A. Yes.</p> <p>24 Q. How did that work? I know at the time Moark</p>

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<p style="text-align: right;">Page 18</p> <p>1 had a vice president of sales, or at least during 2 some of that time. What is the division of 3 responsibilities between the vice president of sales 4 for Moark as a whole and the general manager for each 5 of the regions with regard to supervising sales in 6 each region? 7 A. At that time it would have been a direct 8 report -- I'm sorry, would you repeat that? 9 Q. Sure. There is a vice president of sales 10 nationally of Moark during a large portion of that 11 time, as I understand it, maybe I'm wrong, and you 12 just said you had responsibility for marketing the 13 eggs in your division during that period of time. 14 I'm wondering did you work with the vice 15 president of sales, did he report to you with regard 16 to sales in your area, or was there some -- what was 17 the division of responsibility with regard to 18 marketing eggs to customers within your geographic 19 region? 20 A. The local sales director would have had 21 dotted line reporting responsibility to the vice 22 president of sales and then direct line to me at the 23 time. 24 Q. Do you remember who the national sales</p>	<p style="text-align: right;">Page 20</p> <p>1 acquire the Osborn's ownership interest in Moark, 2 LLC? 3 A. Yes. 4 Q. So at that point, sometime in 2006, Moark 5 became effectively a wholly-owned property of 6 Land O' Lakes? 7 A. Yes. 8 Q. What is Land O' Lakes? 9 A. Land O' Lakes is a large farmer-owned 10 cooperative that operates in -- in dairy and crop 11 production and serving its members throughout the 12 country. 13 Q. Does Land O' Lakes have its own brand of 14 dairy products? 15 A. Yes. 16 Q. And, for example, if ut -- for its dairy 17 members, dairy farmer members, they provide dairy 18 products to Land O' Lakes and their marketed under 19 the Land O' Lakes brand? Is that your understanding? 20 A. Yes. Yes, it is. 21 Q. Okay, thank you. I just need the last part 22 of that to get in. 23 You said crop production. What crops -- do 24 you know what crops?</p>
<p style="text-align: right;">Page 19</p> <p>1 manager was when you first came to Moark? 2 A. Bob Hodges was hired on shortly after I 3 arrived at Moark. 4 Q. And he -- excuse me. It's allergy season 5 and I don't do well at this time of year, so if I 6 cough that's all it is. 7 And Mr. Hodges served as national vice 8 president and director of sales nationally? 9 A. His initial position was director of sales. 10 Q. And there came a time in approximately 2006, 11 about when you became president, that he became vice 12 president of sales? 13 A. Yes. 14 Q. Okay. What were your responsibilities as 15 president and CEO of Moark, LLC? 16 A. The same responsibilities I had in the 17 western region, but just for the entire company. 18 Q. Who owned -- from 2000 to -- until you 19 retired, who owned Moark, LLC? 20 A. Moark, LLC, was a joint venture between the 21 Osborn family and Land O' Lakes, Inc., from the time 22 I joined through -- through approximately the 23 beginning of 2006. 24 Q. At the beginning of 2006, did Land O' Lakes</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Specifically they provided crop protection 2 and crop nutrients for farmers. Land O' Lakes was 3 not in the crop business itself, but provided -- 4 Q. Supplies? 5 A. -- supplies. 6 Q. Sorry. 7 A. For their members. 8 Q. For their members. So they purchased 9 supplies for all their members and provided it to 10 their members? 11 A. And provided services related to -- to 12 crops. 13 Q. What kind of services, do you know? 14 A. The kind of things you would expect from 15 someone buying seed and other products from -- from 16 Land O' Lakes. 17 Q. Okay. During the time you were president of 18 Moark, did Moark -- other than United Egg Producers, 19 which I promise we will get to, did Moark belong to 20 any cooperative selling groups? 21 A. Yes. 22 Q. Which ones? 23 A. I don't recall all of them, but it belonged 24 to in the west the California Egg Marketing</p>

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<p style="text-align: right;">Page 22</p> <p>1 Association.</p> <p>2 Q. What kind of services did the California Egg</p> <p>3 Marketing Association provide for its members?</p> <p>4 A. California Egg Marketing Association is a</p> <p>5 farmer -- farmer cooperative of egg producers in the</p> <p>6 state of California who would be able to -- to trade</p> <p>7 amongst each other and -- and assess market -- assess</p> <p>8 markets, inventory balances, and -- and industry</p> <p>9 tones and information.</p> <p>10 Q. Do you recall any other organizations Moark</p> <p>11 belonged to at the time?</p> <p>12 A. There were members that -- that were a part</p> <p>13 of the American Egg Board from Moark at that time.</p> <p>14 Q. You were president of the American Egg Board</p> <p>15 for a time, weren't you?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall whether Moark was a member of</p> <p>18 Eggs America, Inc.?</p> <p>19 A. Yes, Moark was a member of Eggs America,</p> <p>20 Inc.</p> <p>21 Q. Do you recall what Eggs America, Inc., did?</p> <p>22 A. It provided eggs to food service companies</p> <p>23 across the company.</p> <p>24 Q. Do you remember who had primary</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. It was a single ordering system for all the</p> <p>2 food service customers?</p> <p>3 A. It was, through Eggs America.</p> <p>4 Q. Now during the time you were at Moark, do</p> <p>5 you recall whether Moark and/or various subsidiary</p> <p>6 companies were members of the United Egg Producers?</p> <p>7 Well, first of all, what is United Egg</p> <p>8 Producers?</p> <p>9 A. United Egg Producers is a Capper-Volstead</p> <p>10 co-op and trade association based in Georgia that</p> <p>11 provided a variety of services for its egg producer</p> <p>12 members.</p> <p>13 Q. And you understood it was a Capper-Volstead</p> <p>14 because it told you so?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have an understanding what a</p> <p>17 Capper-Volstead cooperative is?</p> <p>18 A. I have a brief understanding.</p> <p>19 Q. What is that understanding?</p> <p>20 A. It's --</p> <p>21 MR. DAVIS: Excuse me, this is Evan Davis.</p> <p>22 I object to the extent that the question calls for</p> <p>23 the witness to divulge any UEP privileged</p> <p>24 communications.</p>
<p style="text-align: right;">Page 23</p> <p>1 responsibility at Moark for representing Moark with</p> <p>2 responsibility -- with respect to its</p> <p>3 responsibilities as to its membership in Eggs</p> <p>4 America, Inc.?</p> <p>5 A. No, I don't.</p> <p>6 Q. Would it refresh your recollection if I told</p> <p>7 you Mr. Campbell did?</p> <p>8 A. Are you talking about the entire Moark</p> <p>9 organization, or just for --</p> <p>10 Q. The entire Moark organization. Mr. Campbell</p> <p>11 was one of the people who did?</p> <p>12 A. He represented the west, to my recollection,</p> <p>13 for Eggs America.</p> <p>14 Q. And did Joe Fortin represent the east?</p> <p>15 A. Yes.</p> <p>16 Q. Do you remember if you had somebody from the</p> <p>17 Midwest on the Eggs America board?</p> <p>18 A. I don't remember who that was.</p> <p>19 Q. During the time -- we just talked a little</p> <p>20 bit about Eggs America. Do you know what services</p> <p>21 Eggs America provided to its members?</p> <p>22 A. They were responsible for the -- the billing</p> <p>23 and ordering of the food service customers on behalf</p> <p>24 of the egg producers.</p>	<p style="text-align: right;">Page 25</p> <p>1 MS. JACOBSEN: You can answer to the extent</p> <p>2 you have an understanding independent from the advice</p> <p>3 that UEP's lawyers would have given you or your own</p> <p>4 lawyers would have given you.</p> <p>5 MR. SCHIRMER: So even though Moark has</p> <p>6 asserted a defense that you believe in good faith</p> <p>7 this is a -- that this was legal, he can't -- if it's</p> <p>8 based upon something someone from UEP or its lawyers</p> <p>9 told him, he cannot answer? Is that correct?</p> <p>10 MS. JACOBSEN: I think we first need to ask</p> <p>11 him what the basis of his understanding is. If it's</p> <p>12 his own understanding, I think he can answer the</p> <p>13 question. I think that was -- can you read back the</p> <p>14 question?</p> <p>15 (Record read as requested.)</p> <p>16 BY MR. SCHIRMER:</p> <p>17 Q. I think you said yes, then objection. What</p> <p>18 is the basis of that understanding?</p> <p>19 A. Knowledge from the UEP and knowledge</p> <p>20 obtained on my own.</p> <p>21 Q. Okay. Based upon -- to the extent you can</p> <p>22 separate it out, what is the knowledge you have on</p> <p>23 your own of what a Capper-Volstead cooperative is?</p> <p>24 A. It's a cooperative which allows members to</p>

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<p style="text-align: right;">Page 26</p> <p>1 collectively produce, process, and market eggs as 2 qualified farmers. 3 Q. Okay. During the time you were at Moark, to 4 your understanding did UEP sell eggs to Moark's 5 customers? Did UEP sell any of Moark's eggs to 6 Moark's customers? 7 A. No. 8 Q. To your understanding, during the period of 9 time you were at Moark, did UEP market any of Moark's 10 eggs to Moark's customers? 11 MR. DAVIS: Objection. 12 MR. SCHIRMER: On what basis? 13 MR. DAVIS: Vague and misleading. 14 MR. SCHIRMER: What's vague? 15 MR. DAVIS: What's vague? You're using the 16 term "marketing" which you know has a very specific 17 meaning, and I'm not sure that the witness is at all 18 clear on what you mean by that. 19 BY MR. SCHIRMER: 20 Q. Do you have an understanding of the word 21 "marketing" as it's used in the English language? 22 A. Yes. 23 Q. Okay. Using that understanding of the term 24 marketing as it's used in the English language, did</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Joe Fortin. 2 Q. Do you know what committees Mr. Fortin 3 served on? 4 A. I don't recall. 5 Q. Do you recall if Mr. Fortin ever served on 6 the UEP board of directors? 7 A. Yes. 8 Q. Do you know -- do you recall if he served on 9 UEP's board of directors from approximately 2006 to 10 2009? 11 A. I don't remember the dates. 12 Q. You do know that for a period of time he 13 served on UEP's board of directors? 14 A. Yes. 15 Q. Do you know if Mr. Fortin, for a period of 16 time, served as UEP secretary? 17 A. I do not recall. 18 Q. Do you recall whether he served as UEP 19 treasurer during that period of time? 20 A. I don't recall. Excuse me, what period of 21 time? 22 Q. Well, let's say 2000 to 2009, any of that 23 period of time, because I understand that UEP has 24 officers elected year to year. Am I incorrect on</p>
<p style="text-align: right;">Page 27</p> <p>1 UEP market Moark's eggs to any of Moark's customers? 2 A. May I ask you -- 3 MR. DAVIS: Same objection. 4 BY MR. SCHIRMER: 5 Q. Sure, go ahead. 6 A. May I ask you a question? 7 Q. Sure. 8 A. What do you mean by marketing? 9 Q. Did they go out to your customers and try 10 and sell your eggs to your customers? 11 MS. JACOBSEN: You can answer if you 12 understand the question. 13 BY THE WITNESS: 14 A. No. 15 BY MR. SCHIRMER: 16 Q. During the period of time you were at UEP, 17 did members -- or did representatives of Moark or any 18 of its subsidiary companies serve on any UEP 19 committees? 20 A. Yes. 21 Q. Do you remember who served on UEP 22 committees? 23 A. I don't remember all of them. 24 Q. As best you can, what do you remember?</p>	<p style="text-align: right;">Page 29</p> <p>1 that understanding? 2 A. That's correct. 3 Q. Do you know whether during the period from 4 2000 to 2009 Mr. Fortin served on the UEP finance 5 committee? 6 A. I don't recall. 7 Q. During the time you were at Moark, did you 8 serve on the UEP board of directors? 9 A. Yes. 10 Q. Do you remember whether you served on the 11 board of directors from 2006 until sometime later? 12 A. Yes. 13 Q. Do you remember when you stopped serving on 14 the UEP board of directors? 15 A. 2010. 16 Q. Do you remember whether you served on the 17 UEP finance committee? 18 A. No. 19 Q. Do you remember whether you were a member of 20 the UEP government relations committee? 21 A. Yes. 22 Q. Do you remember approximately when you were 23 on the UEP government relations committee? 24 A. I don't remember when.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. I understand that you served as UEP 2 secretary for a year, is that right? 3 A. Yes. 4 Q. And that was 2008, I believe? 5 A. Yes. 6 Q. And I understand that you served as UEP 7 treasurer one year? 8 A. Yes. 9 Q. And was that 2009? 10 A. Yes. 11 Q. The year after you served as secretary? 12 A. Mm-hmm. 13 Q. Did you ever -- did you ever have the title 14 of UEP senior vice chairman? 15 A. No. 16 Q. Were you ever a member of the UEP quality 17 assurance and food safety committee? 18 A. Yes. 19 Q. Do you remember when that was? 20 A. There were many committees. I don't 21 remember which period. 22 Q. And do you remember if you served on the UEP 23 long range planning committee? 24 A. Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Yes, mm-hmm. 2 Q. While you were at Moark as president and 3 CEO, did Bob Hodges report to you starting in 2007? 4 A. Yes. 5 Q. Who were the other people who reported 6 directly to you starting in 2006? 7 A. Our chief financial officer, who at the time 8 was Don Dent. 9 Q. How long was Mr. Dent the chief financial 10 officer? 11 A. Until -- until 2010. 12 Q. Who became chief financial officer when 13 Mr. Dent was no longer chief -- 14 A. Allan Dicks. 15 Q. Did Mr. Dent retire? 16 A. No. 17 Q. What happened? 18 A. We made a change. 19 Q. Okay, I won't ask anymore. 20 Did anyone else report directly to you? 21 A. Yes. 22 Q. Who else? 23 A. Jerry Kil, vice president of operations. 24 Q. Do you remember when Mr. Kil became vice</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Do you remember if that was about 2008 when 2 you did that? 3 A. 2007. 4 Q. 2007. Is there something called an area 5 chairperson or chairman? 6 A. Yes. 7 Q. What is that? 8 A. That's the person -- the UEP was divided 9 into five separate regions that reported up to the 10 national group and that would have been a chairman 11 for each different region or area. 12 Q. Did you ever serve as an area chairman? 13 A. No. 14 Q. What are -- you said there were five regions 15 or areas. Did Moark have facilities or properties in 16 all five areas? 17 A. No. 18 Q. Which ones did it have properties in? 19 A. West Coast region, Midwest region and the -- 20 Q. And the -- 21 A. The northeast. I think that's what they 22 called that region. 23 Q. Whatever would have been covered by those 24 areas?</p>	<p style="text-align: right;">Page 33</p> <p>1 president of operations? 2 A. Shortly after I became CEO in January of 3 2006. 4 Q. Did you have any role in helping Mr. Kil 5 obtain the position of vice president of operations? 6 A. Yes, I did. 7 Q. Perhaps did you recommend him to the board 8 of directors for that position? 9 A. I did. 10 Q. How about Mr. Hodges? Did you recommend 11 Mr. Hodges to be the vice president of sales at that 12 point? 13 A. Yes, I did. 14 Q. Was Mr. Dent the CFO prior to your becoming 15 chief executive officer? 16 A. Yes. 17 Q. Were there any other senior officers who 18 reported directly to you? 19 A. The general managers reported to me at that 20 time. 21 Q. So that would be the general manager of each 22 the three -- 23 A. Each of the -- exactly. 24 Q. You said they reported to you at that time.</p>

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<p style="text-align: right;">Page 34</p> <p>1 Did that change at some point?</p> <p>2 A. Yes, it did.</p> <p>3 Q. How did it change?</p> <p>4 A. Promotions, moves, changes, resignations.</p> <p>5 Typical turnover.</p> <p>6 Q. Did general managers continue to report</p> <p>7 directly to you during the time you were president</p> <p>8 and CEO of Moark?</p> <p>9 A. No, they didn't.</p> <p>10 Q. When did the general managers cease</p> <p>11 reporting directly to you as president and CEO of</p> <p>12 Moark?</p> <p>13 A. Approximately 2008.</p> <p>14 Q. And to whom did they begin reporting?</p> <p>15 A. To Jerry Kil.</p> <p>16 Q. Now you just talked about Mr. Kil. Do you</p> <p>17 remember if Mr. Kil was on the UEP board of directors</p> <p>18 for any period of time?</p> <p>19 A. Yes, he was.</p> <p>20 Q. Do you remember approximately when?</p> <p>21 A. I don't.</p> <p>22 Q. Okay. Do you know if he was ever on the</p> <p>23 marketing committee for UEP?</p> <p>24 A. I don't recall.</p>	<p style="text-align: right;">Page 36</p> <p>1 MOARK-IPP-00228319 through 321.</p> <p>2 BY MR. SCHIRMER:</p> <p>3 Q. Do you recognize this document,</p> <p>4 Mr. Willardson?</p> <p>5 A. No.</p> <p>6 Q. Do you recall -- on the second page of it,</p> <p>7 320, it -- it's an e-mail with an FYI from Jerry Kil</p> <p>8 to Skip Hagy, Gary Foster, Jerry Welch, and you were</p> <p>9 CC'd, is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. And do you see he's forwarding an e-mail</p> <p>12 from Phyllis Blizzard?</p> <p>13 A. Yes.</p> <p>14 Q. Who is Phyllis Blizzard, or who was Phyllis</p> <p>15 Blizzard at that time?</p> <p>16 A. As I recall, Phyllis was an administrative</p> <p>17 director at the UEP.</p> <p>18 Q. And she had sent out an e-mail to Mr. Kil,</p> <p>19 among others, who forwarded it to you, which is right</p> <p>20 below it, talking about -- saying that, "We received</p> <p>21 a majority vote by our membership to approve the</p> <p>22 export order." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. So to your understanding, did it take a</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Do you remember -- are you familiar with a</p> <p>2 company -- with an organization called United States</p> <p>3 Egg Marketers?</p> <p>4 A. Yes.</p> <p>5 Q. What is it?</p> <p>6 A. It's a co-op of egg producer members that</p> <p>7 primarily exports eggs.</p> <p>8 Q. What do you mean when you say "primarily</p> <p>9 exports eggs"?</p> <p>10 A. That was its primary function.</p> <p>11 Q. Was -- during the time you were chairman and</p> <p>12 CEO of Moark, was Moark a member of USEM?</p> <p>13 A. Yes.</p> <p>14 Q. Was it a member of USEM during the entire</p> <p>15 time you were at Moark?</p> <p>16 A. I don't know.</p> <p>17 Q. But you do know that at least from 2006 on</p> <p>18 it was?</p> <p>19 A. Yes.</p> <p>20 Q. You said USEM arranged for exports. Do you</p> <p>21 recall whether -- showing you what will be marked as</p> <p>22 Exhibit 2.</p> <p>23 (Exhibit No. 2 was marked as requested.)</p> <p>24 MR. SCHIRMER: This bears Bates No.</p>	<p style="text-align: right;">Page 37</p> <p>1 majority vote of the membership to approve an export</p> <p>2 order that was to be filled through USEM?</p> <p>3 A. Yes.</p> <p>4 Q. And do you know whether -- do you recall</p> <p>5 whether Moark participated in this export order that</p> <p>6 is discussed in the July 31st e-mail? 31st, 2008</p> <p>7 e-mail?</p> <p>8 A. I don't recall this specific order.</p> <p>9 Q. During the time you were CEO at Moark, did</p> <p>10 Moark participate by providing eggs for export orders</p> <p>11 on a number of USEM exports?</p> <p>12 A. Yes, we did.</p> <p>13 (Exhibit No. 3 was marked as requested.)</p> <p>14 BY MR. SCHIRMER:</p> <p>15 Q. Showing you what has been marked as Exhibit</p> <p>16 No. 3 to your deposition. It is a document bearing</p> <p>17 Bates No. MOARK-IPP-0026283. Do you see this, sir?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. It looks like an e-mail from me to the</p> <p>21 senior managers at Moark forwarding information from</p> <p>22 Gene Gregory.</p> <p>23 Q. And you say, "Jerry Kil, our USEM</p> <p>24 representative, informed of us the latest export</p>

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<p style="text-align: right;">Page 38</p> <p>1 information, which is noted below."</p> <p>2 A. Yes.</p> <p>3 Q. What did you mean when you said, Jerry Kil</p> <p>4 our USEM representative?</p> <p>5 A. Jerry Kil attended USEM meetings and -- and</p> <p>6 conference calls and represented Moark in that</p> <p>7 regard.</p> <p>8 Q. Now did he represent Moark in all of the</p> <p>9 Moark entities in those conference calls?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall this e-mail?</p> <p>12 A. This particular one?</p> <p>13 Q. Uh-huh.</p> <p>14 A. I probably send and receive a hundred</p> <p>15 e-mails a day. I can't say that I remember this</p> <p>16 exact one.</p> <p>17 Q. Do you remember whether -- you do remember</p> <p>18 that Moark participated in the export order that is</p> <p>19 -- that is referred to here?</p> <p>20 A. Yes, I do.</p> <p>21 Q. And Moark did? Did participate in that</p> <p>22 export?</p> <p>23 A. Yes.</p> <p>24 Q. I'm going to show you what is about to be</p>	<p style="text-align: right;">Page 40</p> <p>1 agreement?</p> <p>2 MS. JACOBSEN: Objection to form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I don't remember what I was telling Mr. Kil</p> <p>5 at the time.</p> <p>6 BY MR. SCHIRMER:</p> <p>7 Q. Would you please look at the second page,</p> <p>8 which is the 2008 U.S. Egg Marketers membership</p> <p>9 agreement and export commitment. It says under</p> <p>10 number two, do you see that? That's Page 4378.</p> <p>11 A. Yes.</p> <p>12 Q. "Our company agrees to participate pro rata</p> <p>13 in all shell egg export orders approved by the USEM</p> <p>14 export committee and approved by the majority of USEM</p> <p>15 members." Did I read that right?</p> <p>16 A. Yes.</p> <p>17 Q. And you -- you were a member of USEM in</p> <p>18 2008?</p> <p>19 A. Yes.</p> <p>20 Q. And was this provision part of the standard</p> <p>21 USEM membership agreement during the period of time</p> <p>22 you were CEO at Moark?</p> <p>23 A. To my understanding, yes.</p> <p>24 Q. Okay.</p>
<p style="text-align: right;">Page 39</p> <p>1 marked as -- isn't it the case that Moark</p> <p>2 participated in all USEM exports?</p> <p>3 A. Yes, whether we -- whether we supported the</p> <p>4 export or not, we participated in all of them.</p> <p>5 Q. Okay. Mark that off, I was going to ask you</p> <p>6 that question about three down the line.</p> <p>7 I'll show you what has been marked as</p> <p>8 Exhibit 4.</p> <p>9 (Exhibit No. 4 was marked as requested.)</p> <p>10 BY MR. SCHIRMER:</p> <p>11 Q. This is a document bearing Bates No.</p> <p>12 MOARK0004377 and 4378. What is this document and the</p> <p>13 attachment, sir?</p> <p>14 A. This appears to be the membership agreement</p> <p>15 and export commitment for the USEM.</p> <p>16 Q. And the cover memo is an e-mail from you to</p> <p>17 Mr. Kil, is that right?</p> <p>18 A. Right, yes.</p> <p>19 Q. You say, "Same drill as previous e-mail."</p> <p>20 Do you know what you are referring to there?</p> <p>21 A. I don't.</p> <p>22 Q. Could you -- let's see if I can refresh your</p> <p>23 recollection. Were you telling Mr. Kil to sign on</p> <p>24 behalf of all Moark entities the membership</p>	<p style="text-align: right;">Page 41</p> <p>1 (Exhibit No. 5 was marked as requested.)</p> <p>2 BY MR. SCHIRMER:</p> <p>3 Q. Showing you what is to be marked as</p> <p>4 Exhibit 5 to your deposition, sir. This bears Bates</p> <p>5 Nos. MOARK0005475 and 5476. What is this document,</p> <p>6 Mr. Willardson?</p> <p>7 A. This is an e-mail whose header, I see, is</p> <p>8 from our controller to Linda Reickard and below that</p> <p>9 an e-mail from Linda to me.</p> <p>10 Q. It says WillardsonC@aol.com. Is that one of</p> <p>11 your e-mails?</p> <p>12 A. Yes, it.</p> <p>13 Q. Is that a work e-mail or a personal e-mail?</p> <p>14 A. It was the personal e-mails that we used</p> <p>15 prior to having Moark LLC's e-mail system.</p> <p>16 Q. When did Moark, LLC -- strike that.</p> <p>17 When did you obtain a Moark, LLC, e-mail</p> <p>18 address?</p> <p>19 A. I don't remember which year.</p> <p>20 Q. Obviously it was not in 2007. Or it might</p> <p>21 have been.</p> <p>22 A. No.</p> <p>23 Q. Okay. Well, you did have it in 2007?</p> <p>24 A. We had it in 2007.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q. But she sent it to the other one?</p> <p>2 A. She --</p> <p>3 Q. Probably didn't have it?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Would you take a look at that, the</p> <p>6 e-mail from Linda Reickard to you at your aol.com.</p> <p>7 It says Past Due Invoice it. It says, "Would you</p> <p>8 please check on our past due invoice #2742, which</p> <p>9 covered your portion of the loss on the last export</p> <p>10 and let me know the status." What was she talking</p> <p>11 about when she wrote you about your portion of the</p> <p>12 loss on the last export?</p> <p>13 MS. JACOBSEN: Objection to form.</p> <p>14 BY MR. SCHIRMER:</p> <p>15 Q. You can answer.</p> <p>16 A. If there were a loss on an export, we would</p> <p>17 be allocated our proportionate share of that loss as</p> <p>18 UEP members based on the number of birds that we</p> <p>19 owned.</p> <p>20 Q. And you basically write a check to -- to</p> <p>21 USEM?</p> <p>22 MS. JACOBSEN: Objection to form.</p> <p>23 BY MR. SCHIRMER:</p> <p>24 Q. You said you would be allocated a portion of</p>	<p style="text-align: right;">Page 44</p> <p>1 management, sir?</p> <p>2 A. Dan Hudgens was the Midwest general manager,</p> <p>3 and Bob Hodges was the vice president of sales at the</p> <p>4 time.</p> <p>5 Q. And in the follow-up from you to</p> <p>6 Mr. Willardson it says, subject, Forward UEP Export</p> <p>7 Order. It says, "Guys, will FRE or another complex</p> <p>8 be interested in filling this order? If not, we will</p> <p>9 approve it and accept the pro rata share of the</p> <p>10 loss." What is FRE?</p> <p>11 A. It's Fort Recovery Equity. It's a</p> <p>12 cooperative company that we -- we owned a 50 percent</p> <p>13 share. We purchased all their eggs. It was part of</p> <p>14 the overall Moark system.</p> <p>15 Q. And was that in Ohio?</p> <p>16 A. Yes.</p> <p>17 Q. Now you said, "If not, we will approve it</p> <p>18 and accept the pro rata share of the loss." Do you</p> <p>19 recall what you were talking about or what you were</p> <p>20 writing about when you wrote that to Mr. Hudgens and</p> <p>21 Mr. Hodges?</p> <p>22 A. Yes, it sounds like an export was imminent</p> <p>23 and we did anticipate there -- there could be or</p> <p>24 would be a loss on that particular order.</p>
<p style="text-align: right;">Page 43</p> <p>1 the loss. What does that mean?</p> <p>2 A. Yes. Back to your previous question.</p> <p>3 Q. Back to the previous question, you would</p> <p>4 write a check for that portion of the loss?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Do you recall whether you ever --</p> <p>7 when you were about to enter into an export that had</p> <p>8 been voted on by the UEP membership whether you</p> <p>9 understood it was likely to result in a loss?</p> <p>10 A. No.</p> <p>11 Q. Okay. Showing you what is being marked as</p> <p>12 Exhibit 6.</p> <p>13 (Exhibit No. 6 was marked as requested.)</p> <p>14 BY MR. SCHIRMER:</p> <p>15 Q. This is a document bearing Bates No.</p> <p>16 MOARK00017526.</p> <p>17 A. Mm-hmm.</p> <p>18 Q. It is a one-page document.</p> <p>19 A. Yes.</p> <p>20 Q. What is it?</p> <p>21 A. It's an e-mail from Patricia at the UEP to</p> <p>22 me and then a follow-up from me to two members of</p> <p>23 senior management.</p> <p>24 Q. And who were those two members of senior</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. And by loss, what do you mean?</p> <p>2 A. As we discussed before, that's our pro rata</p> <p>3 share of any -- any loss to the organization, to the</p> <p>4 members on an export order.</p> <p>5 Q. How would there be a loss on an export</p> <p>6 order? That's what I don't understand.</p> <p>7 A. There were three options to fill any export</p> <p>8 order as a member/producer of UEP, and the first was</p> <p>9 to provide our own eggs from whatever source we had</p> <p>10 them; for us to purchase eggs on the outside; and the</p> <p>11 third was to have UEP buy eggs on our behalf to fill</p> <p>12 the order, and there were costs associated with --</p> <p>13 with those options, and there were market</p> <p>14 fluctuations and variations. There would be a time</p> <p>15 differential between the agreement to do an export or</p> <p>16 -- and the actual filling of the order, so to the</p> <p>17 extent there was any market movement in that period</p> <p>18 of time and there was a committed fixed price on the</p> <p>19 export, there could be a loss incurred based on that</p> <p>20 -- the selling price and the ultimate delivery price.</p> <p>21 Q. Now let me see if I understand what you just</p> <p>22 said. The loss would be -- there were three -- a</p> <p>23 couple things that USEM could do. It could -- it</p> <p>24 could purchase eggs on the market to fulfill portions</p>

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<p style="text-align: right;">Page 46</p> <p>1 of the export order. Is that one of the things it 2 could do?</p> <p>3 A. Yes.</p> <p>4 Q. And one the risks of loss was that USEM 5 would not be able to procure eggs at a price equal to 6 or lower than the cost at which it had made the 7 export commitment?</p> <p>8 A. It was a risk based on timing.</p> <p>9 Q. Whatever. I'm just trying to understand the 10 testimony.</p> <p>11 So there was a risk that it could not cover 12 the export order based upon the timing or whatever, 13 that it might have to pay more for the eggs that it 14 would purchase to fill the export order than the 15 export order price, is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Was it your understanding that the purpose 18 of these exports was to help firm up the domestic 19 market for shell eggs?</p> <p>20 MS. JACOBSEN: Objection to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. The purpose of the export order was to 23 provide a market for -- for eggs, for surplus eggs 24 just like any other market and to -- you know, if it</p>	<p style="text-align: right;">Page 48</p> <p>1 Exhibit 7 to your deposition.</p> <p>2 (Exhibit No. 7 was marked as requested.)</p> <p>3 BY MR. SCHIRMER:</p> <p>4 Q. What is Exhibit 7, Mr. Willardson?</p> <p>5 A. Exhibit 7 is a series of e-mails between 6 Gene Gregory, members of the UEP or USEM board, and 7 then myself and Jerry Kil and other members.</p> <p>8 Q. Oh, I'm sorry. Forgive me.</p> <p>9 A. It's okay.</p> <p>10 Q. And this is a -- the top e-mail is from you 11 to Mr. Kil, is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And it's dated October 23, 2006. This is a 14 document bearing Bates number MOARK0036917 through 15 918. I take it because you -- given you received and 16 sent so many e-mails, you don't remember this 17 particular e-mail?</p> <p>18 A. I don't remember this particular one.</p> <p>19 Q. You were writing to him about an export 20 order, is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And it was your anticipation that it would 23 have an impact on the price of eggs?</p> <p>24 A. It -- it was.</p>
<p style="text-align: right;">Page 47</p> <p>1 worked out that way, to remove them from the domestic 2 supply.</p> <p>3 Q. Okay. And if it removed them from the 4 domestic supply, would that have an impact on price?</p> <p>5 A. It could. It didn't always, but it could.</p> <p>6 Q. If it had an impact, what would be that 7 impact in general?</p> <p>8 A. Very difficult thing to measure and to 9 correlate.</p> <p>10 Q. Okay. Would you say that the -- you knew at 11 certain times it had to have an impact?</p> <p>12 MS. JACOBSEN: Objection to form.</p> <p>13 BY MR. SCHIRMER:</p> <p>14 Q. On the market?</p> <p>15 A. We hoped it had an impact. We don't know 16 that it did.</p> <p>17 Q. Would you agree that you knew at certain 18 times that when you did an export order you thought 19 it had to have an impact?</p> <p>20 MS. JACOBSEN: Objection, form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Yes.</p> <p>23 BY MR. SCHIRMER:</p> <p>24 Q. Okay. Showing you what is to be marked as</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. And you hoped that would be a positive 2 impact I take it?</p> <p>3 MS. JACOBSEN: Objection to form.</p> <p>4 BY MR. SCHIRMER:</p> <p>5 Q. You can answer.</p> <p>6 A. I hoped for a positive impact.</p> <p>7 Q. I would think. How about number eight.</p> <p>8 (Exhibit No. 8 was marked as requested.)</p> <p>9 MR. SCHIRMER: Off the record for a minute.</p> <p>10 THE VIDEOGRAPHER: We are going off the 11 video record at 10:29 a.m.</p> <p>12 (A brief discussion was had off the record.)</p> <p>13 THE VIDEOGRAPHER: We are back on the video 14 record at 10:30 a.m.</p> <p>15 BY MR. SCHIRMER:</p> <p>16 Q. Mr. Willardson, I am showing you what has 17 been marked as Exhibit 8 to your deposition bearing 18 Bates No. MOARK0036622 and 36623. What is it?</p> <p>19 A. It looks like an e-mail dated on the top 20 October 19, 2007, a message from me to Dan Knutson, 21 and I was forwarding an e-mail that I had originally 22 sent to -- to a couple members of the Moark 23 management team, and then below that an e-mail from 24 Jerry Kil to various members of the Moark management</p>

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<p style="text-align: right;">Page 50</p> <p>1 team.</p> <p>2 Q. Now according to this e-mail, Moark -- this</p> <p>3 was about a USEM export, is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And it was voted in by a majority vote of</p> <p>6 USEM, is that correct, according to this e-mail?</p> <p>7 A. Yes.</p> <p>8 Q. And Moark voted against it?</p> <p>9 A. We did.</p> <p>10 Q. Do you remember why?</p> <p>11 A. I don't remember why.</p> <p>12 Q. When -- excuse me.</p> <p>13 In your e-mail to Mr. Dent and Mr. Andrews</p> <p>14 -- by the way, who is Mr. Andrews? Herb Andrews?</p> <p>15 A. Herb Andrews, he was an analyst for the</p> <p>16 company, for Moark, LLC.</p> <p>17 Q. What do you mean an analyst for Moark, LLC?</p> <p>18 I don't understand.</p> <p>19 A. Let me back up on that. In 2007, he</p> <p>20 actually, at that point in time, he worked for</p> <p>21 Land O' Lakes in the risk management department, and</p> <p>22 prior to 2006, he was an employee of Moark, LLC.</p> <p>23 Q. Let me see if I get -- come back to this. I</p> <p>24 want to make sure I understand what you just said.</p>	<p style="text-align: right;">Page 52</p> <p>1 CFO of the company?</p> <p>2 A. Yes.</p> <p>3 Q. Who is Mr. Knutson?</p> <p>4 A. Mr. Knutson is the person that I reported to</p> <p>5 at Land O' Lakes.</p> <p>6 Q. What was his title?</p> <p>7 A. Senior vice president and chief financial</p> <p>8 officer of Land O' Lakes. He was also chairman of</p> <p>9 the board of Moark, LLC.</p> <p>10 Q. Was he -- was Mr. Knutson -- is it Knutson?</p> <p>11 A. Knutson. Hard K.</p> <p>12 Q. Okay. Was Mr. Knutson the chairman of the</p> <p>13 board of Moark, LLC, during the entire time you were</p> <p>14 CEO and president of Moark?</p> <p>15 A. Yes.</p> <p>16 Q. Did he hold the same position -- strike</p> <p>17 that.</p> <p>18 To your understanding, did he hold the same</p> <p>19 position at Land O' Lakes during the entire time you</p> <p>20 were president and CEO of Moark, LLC?</p> <p>21 A. Yes.</p> <p>22 Q. Was he based in Minneapolis, perchance?</p> <p>23 A. Yes.</p> <p>24 Q. Now you say in your e-mail to Mr. Knutson</p>
<p style="text-align: right;">Page 51</p> <p>1 Mr. Andrews, before 2006, was an employee of Moark,</p> <p>2 LLC?</p> <p>3 A. Yes.</p> <p>4 Q. And then after 2006, he began to work for</p> <p>5 Land O' Lakes?</p> <p>6 A. Yes.</p> <p>7 Q. And he was in the risk management department</p> <p>8 of Land O' Lakes is your understanding?</p> <p>9 A. Yes. He was an analyst in the risk</p> <p>10 management group.</p> <p>11 Q. What does that mean, an analyst in the risk</p> <p>12 management group?</p> <p>13 A. He's someone that would have evaluated the</p> <p>14 metrics and trends and provided information.</p> <p>15 Q. Who did he provide information to?</p> <p>16 A. He -- for the divisions of Land O' Lakes.</p> <p>17 Q. And he would provide information to --</p> <p>18 A. To someone within the Moark organization.</p> <p>19 Q. That's what I wanted to find out, someone</p> <p>20 within the Moark organization. Do you know whether</p> <p>21 he provided information about Moark's business to</p> <p>22 Land O' Lakes?</p> <p>23 A. Don't know.</p> <p>24 Q. Okay. And Mr. Dent was, at the time, the</p>	<p style="text-align: right;">Page 53</p> <p>1 dated October 18, 2007, or to Mr. Dent and</p> <p>2 Mr. Andrews CC'ing Mr. Knutson that the USEM proved a</p> <p>3 "modest export" of 130 loads to Europe at, I guess,</p> <p>4 \$0.60 a dozen, is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And he said, "As cooperative members we will</p> <p>7 support it, of course." That -- as a cooperative,</p> <p>8 and that is pursuant to the agreement that you had</p> <p>9 with USEM that you would support all the export</p> <p>10 orders?</p> <p>11 A. Yes.</p> <p>12 Q. And we will see -- and then you say, "And we</p> <p>13 will see improving markets into the holidays." What</p> <p>14 were you referring to there?</p> <p>15 A. That was a bit presumptuous.</p> <p>16 Q. Okay. What were you presuming?</p> <p>17 A. And with the benefit of seven years of</p> <p>18 hindsight, it's interesting to go back and read</p> <p>19 these.</p> <p>20 We were assuming that an export would have</p> <p>21 an indeterminate impact on the market.</p> <p>22 Q. And you assumed it was going to be a</p> <p>23 positive impact on the market?</p> <p>24 A. Yes.</p>

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<p style="text-align: right;">Page 54</p> <p>1 Q. And when we say positive, I'm talking about</p> <p>2 from Moark's point of view, increased prices?</p> <p>3 A. Yes.</p> <p>4 Q. Something that Mr. Knutson wrote to you in</p> <p>5 his e-mail to you, he said, "I guess the export will</p> <p>6 cause egg supply challenge into the holiday season."</p> <p>7 Do you have an understanding as to what Mr. Knutson</p> <p>8 meant when he wrote that?</p> <p>9 A. As a company, we -- we were tight on eggs</p> <p>10 and might have voted no for that reason, but we knew</p> <p>11 it would be a challenge going into the holiday</p> <p>12 season.</p> <p>13 Q. So when you -- when he's talking about egg</p> <p>14 supply challenge, you assume that he is talking about</p> <p>15 an egg supply challenge to the company?</p> <p>16 MS. JACOBSEN: Objection to form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I don't like to make assumptions. I</p> <p>19 don't --</p> <p>20 BY MR. SCHIRMER:</p> <p>21 Q. You don't recall?</p> <p>22 A. Right.</p> <p>23 MR. SCHIRMER: Why don't we take a break.</p> <p>24 THE VIDEOGRAPHER: We are going off the</p>	<p style="text-align: right;">Page 56</p> <p>1 those plans?</p> <p>2 A. Ultimately it was my responsibility working</p> <p>3 with the management team.</p> <p>4 Q. Okay. And you obviously tried to make those</p> <p>5 plans as accurate as you could make them so that the</p> <p>6 board of Land O' Lakes could make good decisions</p> <p>7 about Moark's business?</p> <p>8 MS. JACOBSEN: Objection to form.</p> <p>9 BY MR. SCHIRMER:</p> <p>10 Q. You didn't lie to your bosses at Moark -- at</p> <p>11 Land O' Lakes, did you?</p> <p>12 MS. JACOBSEN: Objection to form. Go ahead.</p> <p>13 BY THE WITNESS:</p> <p>14 A. No.</p> <p>15 BY MR. SCHIRMER:</p> <p>16 Q. Okay. It's easier for me to say it that</p> <p>17 way. I promise I'll come back to that.</p> <p>18 I want to show you what is being marked as</p> <p>19 Exhibit 9 to your deposition.</p> <p>20 (Exhibit No. 9 was marked as requested.)</p> <p>21 BY MR. SCHIRMER:</p> <p>22 Q. This is a three-page document, I think.</p> <p>23 Yeah. Or is it four? Four-page document. Bearing</p> <p>24 Bates Nos. MOARK0036602 through 36605. What is this?</p>
<p style="text-align: right;">Page 55</p> <p>1 video record at 10:36 a.m.</p> <p>2 (A short break was taken.)</p> <p>3 THE VIDEOGRAPHER: We are back on the video</p> <p>4 record at 10:49 a.m.</p> <p>5 BY MR. SCHIRMER:</p> <p>6 Q. Before we took a break, I showed you an</p> <p>7 e-mail where -- e-mails between you and Mr. Knutson.</p> <p>8 Do you remember that?</p> <p>9 A. Yes.</p> <p>10 Q. And you said Mr. Knutson was the chairman of</p> <p>11 the board of Moark, LLC, during the period of time</p> <p>12 you were the president and CEO of Moark. Am I -- did</p> <p>13 I understand that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Did Moark -- from -- during the period of</p> <p>16 time you were the president and CEO of Moark, did</p> <p>17 Moark do long range growth plans for presentation to</p> <p>18 the board of Land O' Lakes?</p> <p>19 MS. JACOBSEN: Objection to form. Go ahead.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Yes, we did.</p> <p>22 BY MR. SCHIRMER:</p> <p>23 Q. And when you did those long range growth</p> <p>24 plans, who had primary responsibility for formulating</p>	<p style="text-align: right;">Page 57</p> <p>1 A. This is an e-mail dated October 16, 2007,</p> <p>2 from me to our chief financial officer, Don Dent.</p> <p>3 Q. And then Mr. Dent also sent you an e-mail at</p> <p>4 the top on October 16, 2007?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. What was the subject -- it says third</p> <p>7 quarter review, and he talks about a one-page slide</p> <p>8 in his e-mail to you, the top one. Do you have an</p> <p>9 understanding what he was discussing there?</p> <p>10 A. In terms of the missing slide?</p> <p>11 Q. Yeah, sure. Let's start there.</p> <p>12 A. I know the document -- the overall document</p> <p>13 is the quarterly review that we prepared for Land O'</p> <p>14 Lakes each quarter for the owners.</p> <p>15 Q. And was that put on a PowerPoint?</p> <p>16 A. Yes.</p> <p>17 Q. Would you please look at the e-mail from you</p> <p>18 to Mr. Dent, and that's dated Tuesday, October 16,</p> <p>19 2007, and that's on page 0036602, the first page of</p> <p>20 the document. And it says, "Don, note for the</p> <p>21 missing slide and add any others you may feel</p> <p>22 appropriate. It went well in the quarter,</p> <p>23 opportunities achieved." I take it you are writing</p> <p>24 this to Mr. Dent to be put on a slide for the third</p>

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<p style="text-align: right;">Page 58</p> <p>1 quarter review, is that right? This first page?</p> <p>2 A. Yes.</p> <p>3 Q. And it said, "A small export order</p> <p>4 coordinated by the U.S. Egg Marketers in which Moark</p> <p>5 participated, the impact of shipping surplus eggs</p> <p>6 resulted in a tight egg market leading to the best</p> <p>7 third quarter market in industry history." Do you</p> <p>8 see that?</p> <p>9 A. Yes.</p> <p>10 Q. And that was accurate when you wrote it,</p> <p>11 wasn't it?</p> <p>12 MS. JACOBSEN: Objection to form.</p> <p>13 THE WITNESS: What do you mean by accurate?</p> <p>14 BY MR. SCHIRMER:</p> <p>15 Q. You didn't lie on the slide you were going</p> <p>16 to present to your bosses?</p> <p>17 MS. JACOBSEN: Objection to form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. As I said before, looking back on these</p> <p>20 things, I was very presumptuous to say this is a</p> <p>21 direct cause-and-effect action. There are so many</p> <p>22 factors that lead to a good egg market. This is what</p> <p>23 I said. These are my words.</p> <p>24</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And in that -- the first two paragraphs</p> <p>2 read, "In May you approved the export sale of 100</p> <p>3 containers of eggs. Those eggs were delivered over a</p> <p>4 period of May 21st through June 24th. The</p> <p>5 Urner-Barry Midwest large quote was \$1.04 from the</p> <p>6 day you approved the export sale. During the period</p> <p>7 of delivery, the Urner-Barry quote rose by \$0.30 per</p> <p>8 dozen. We therefore conclude that this export was of</p> <p>9 great economic value to your company and the industry</p> <p>10 as a whole."</p> <p>11 Was that consistent with your understanding</p> <p>12 of the markets at that time, sir?</p> <p>13 A. Was what consistent? The dollar amount</p> <p>14 that's there?</p> <p>15 Q. The statement that the -- the statement,</p> <p>16 okay, let's do it one by one.</p> <p>17 The Urner-Barry Midwest large quote was</p> <p>18 \$1.04 on the date you approved the export sale. I</p> <p>19 take it you don't remember that exact number?</p> <p>20 A. I don't remember that exact number.</p> <p>21 Q. During the period of delivery, the</p> <p>22 Urner-Barry quote rose by \$0.30 per dozen. Do you</p> <p>23 recall that -- do you recall the Urner-Barry quote in</p> <p>24 2008, May through June of 2008, rising substantially,</p>
<p style="text-align: right;">Page 59</p> <p>1 BY MR. SCHIRMER:</p> <p>2 Q. And at the time you meant what you wrote?</p> <p>3 A. At the time I meant what I wrote.</p> <p>4 (Exhibit No. 10 was marked as requested.)</p> <p>5 BY MR. SCHIRMER:</p> <p>6 Q. Showing you what has been marked as</p> <p>7 Exhibit 10 to your deposition. It is a -- a document</p> <p>8 and an attachment bearing Bates No. MOARK-IPP-028504</p> <p>9 through 505. It's dated Thursday, July 10, 2008, is</p> <p>10 the e-mail at the top of the page 28504. What is</p> <p>11 this e-mail and the attachment, sir?</p> <p>12 A. This appears to be an e-mail from me to our</p> <p>13 senior management team on that date of July 10th</p> <p>14 forwarding information from UEP and Phyllis Blizzard</p> <p>15 and an attached -- an attached memo that would have</p> <p>16 been written to the USEM members from Gene Gregory.</p> <p>17 Q. And you were providing this to members of</p> <p>18 your management team for their information and use?</p> <p>19 A. Yes, for their information.</p> <p>20 Q. And -- excuse me. In the attached --</p> <p>21 attached to the e-mail is a -- a letter from Gene</p> <p>22 Gregory to United States Egg Marketer members, is</p> <p>23 that right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 let's say \$0.30 per dozen, during that period of</p> <p>2 time?</p> <p>3 A. I don't recall between May 21st and</p> <p>4 June 24th if it rose substantially.</p> <p>5 Q. Do you recall whether it rose substantially</p> <p>6 during -- approximately during that period of time?</p> <p>7 A. That's usually a very weak time in the egg</p> <p>8 business. I -- I don't recall that exact period.</p> <p>9 Q. When you say it's generally a weak time,</p> <p>10 what does that mean?</p> <p>11 A. We're seasonal in this business. It's post</p> <p>12 Easter and it's during the summer months where we</p> <p>13 traditionally struggle to balance supply and demand</p> <p>14 in the egg industry.</p> <p>15 Q. So generally when you say weak, you would</p> <p>16 generally expect the egg prices to be falling during</p> <p>17 that period of time?</p> <p>18 A. Not necessarily falling, just not as strong</p> <p>19 as they are during the Easter and holiday periods.</p> <p>20 It's just -- it's a relative comparison.</p> <p>21 Q. Do you remember receiving this e-mail from</p> <p>22 -- this letter from Mr. Gregory?</p> <p>23 A. I don't remember this exact e-mail.</p> <p>24 Q. Do you remember ever telling Mr. Gregory</p>

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<p style="text-align: right;">Page 62</p> <p>1 that you disagreed with his view that the export was 2 of great economic value to your company and the 3 industry as a whole? 4 MS. JACOBSEN: Objection to form. 5 BY THE WITNESS: 6 A. No. 7 BY MR. SCHIRMER: 8 Q. Do you remember whether you disagreed with 9 Mr. Gregory at the time? 10 A. Gene Gregory was very proud of his 11 organization and loved to promote what he did and the 12 things that Gene said were Gene's opinions and 13 sometimes we agreed, sometimes we didn't. 14 Q. If you had an opportunity to review what 15 Mr. Gregory said prior to him making a presentation, 16 would you have told him if you disagreed with some of 17 the things he was saying? 18 MS. JACOBSEN: Objection to form. 19 BY THE WITNESS: 20 A. No. 21 BY MR. SCHIRMER: 22 Q. You would have just let him go ahead and say 23 stuff you thought was wrong? 24 MS. JACOBSEN: Objection to form.</p>	<p style="text-align: right;">Page 64</p> <p>1 market based on a number of inputs and resources, and 2 quote the market independently and provide some 3 information for us, understanding of trends and tones 4 from their perspective. 5 Q. And that was provided to Moark on a daily 6 basis? 7 A. It was. 8 Q. Do you recall reviewing that on a daily 9 basis? 10 A. I didn't on a daily basis. 11 Q. You reviewed it on a periodic basis? 12 A. Weekly. 13 Q. And why did you review it on a weekly basis? 14 A. Because the market was moving. 15 Q. Did Moark, in selling eggs to its customers, 16 use the quotations provided by Urner-Barry as a basis 17 for pricing to its customers? 18 A. For a majority of the customers, yes. 19 Q. Let's talk about that majority of the 20 customers. Was that -- let's take a step back. 21 Do you have an understanding of what the 22 term specialty egg means? 23 A. Yes. 24 Q. What are specialty eggs?</p>
<p style="text-align: right;">Page 63</p> <p>1 BY THE WITNESS: 2 A. It's his presentation. 3 BY MR. SCHIRMER: 4 Q. Do you ever recall whether you were involved 5 in Mr. Gregory's -- in a panel where Mr. Gregory made 6 a presentation to the industry on behalf -- let's say 7 you were chairman of a panel in which Mr. Gregory 8 made a presentation to members of the industry. 9 A. Yes, I do remember -- 10 MS. JACOBSEN: Objection to form. Go ahead. 11 BY MR. SCHIRMER: 12 Q. When was that, sir? 13 A. It was sometime in 2008. 14 Q. I promise we'll come back. I think we'll go 15 away from exports for right now. How about that? 16 You said Moark, at the time you were there, 17 did long range planning. What is Urner-Barry, sir? 18 A. Urner-Barry is an independent food market 19 reporter based in New Jersey. Been around since the 20 1850s. 21 Q. And with regard to eggs, what services does 22 Urner-Barry provide? 23 A. They provided to us an ongoing daily 24 tracking of their market quote. They would quote the</p>	<p style="text-align: right;">Page 65</p> <p>1 A. It's any egg that isn't a traditional white 2 commodity shell egg in a carton. It has special 3 attributes, characteristics, methods of raising the 4 hen to lay the egg. 5 Q. For example, would cage free production be a 6 specialty egg? 7 A. Cage free would be a specialty egg, yes. 8 Q. Natural feed would be a specialty egg? 9 A. Yes. 10 Q. Did Land O' Lakes have a -- during the 11 period of time you were CEO, did you have a set of 12 Land O' Lakes brands of specialty eggs? 13 A. Yes. 14 Q. And other than the Land O' Lakes brand of 15 specialty eggs, did you sell any other brands of 16 specialty eggs? 17 A. Yes, we did. 18 Q. And those specialty eggs, were they priced 19 on the basis -- in reference to the Urner-Barry 20 index? 21 A. No. 22 Q. You said something about commodity eggs, 23 white commodity eggs. 24 A. Mm-hmm.</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. So commodity eggs are, you said, just 2 general white -- 3 A. Generic eggs. 4 Q. -- generic eggs. 5 And were those -- is it your understanding 6 that Moark priced those eggs for its customers with 7 reference to the Urner-Barry price indexes? 8 MS. JACOBSEN: Objection, asked and 9 answered. Go ahead. 10 BY THE WITNESS: 11 A. Yes, for the majority of customers. 12 BY MR. SCHIRMER: 13 Q. What other -- was there another basis you 14 would price commodity eggs? 15 A. There were some customers who asked for 16 fixed or flat pricing. Some would go for an entire 17 year for quarter by quarter on commodity eggs. 18 Q. Who were those customers, do you recall? 19 A. Like Trader Joe's, for example. 20 Q. During what period of time do you recall 21 Moark selling to Trader Joe's on a fixed or other 22 pricing basis? 23 A. From the time I began at Moark in 2000 until 24 the business went elsewhere in 2008.</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. SCHIRMER: The first page is 2193, then 2 the next page was produced as 2194, and that's -- all 3 of them were produced under that number. 4 BY MR. SCHIRMER: 5 Q. Do you recognize this document, sir? 6 A. Yes, I do. 7 Q. What is it? 8 A. This is a result of a weekly retail egg 9 price audit by store. 10 Q. And this was -- and Mr. Hodges forwarded 11 this to you and to Ms. Rinehart. Who is 12 Ms. Rinehart? 13 A. She was my administrative assistant at the 14 time. 15 Q. Okay. That's all on that. Do you recall if 16 Moark -- go back to this for a minute, I'm sorry. 17 What is IRI market data? 18 A. IRI is an information resource data company 19 that provides retail data that it gathers to members 20 who subscribe to its service. 21 Q. Did Moark subscribe to the IRI service 22 during the period of time you were the chairman and 23 chief executive officer? 24 A. I'm sorry, I wasn't chairman.</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Do you recall whether Moark performed retail 2 pricing audits? 3 A. Yes. 4 Q. Did it? I asked you if you recalled and you 5 said yes, now I have to ask you what you recall. 6 Do you recall that it performed -- you 7 recall that it performed retail pricing audits? 8 A. I recall that. 9 Q. And do you recall whether that was done on a 10 weekly basis? 11 A. When we were doing it, it was weekly. 12 Q. Okay. Do you recall the period of time in 13 which you did those audits? 14 A. I don't. 15 Q. I'm going to show you what is to be marked 16 as, I guess, Exhibit 11 to your deposition. This was 17 previously marked as Exhibit 13 to Mr. Hodges' 18 deposition. It bears Bates Nos. Moark IPP-0002193 19 through 2194, and this -- the attachments were 20 produced as 2194. 21 MS. JACOBSEN: This is 11? 22 MR. SCHIRMER: It's 11 to Willardson, it was 23 13 to Bob Hodges. 24 (Exhibit No. 11 was marked as requested.)</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. I mean chief executive officer and 2 president, forgive me. I was trying to promote you. 3 A. Thank you. 4 Q. Did you subscribe? You said it provided 5 data to people who subscribe. 6 A. During most of the time I was president of 7 the company. It wasn't the entire time. 8 Q. Do you remember what period of time you 9 subscribed? 10 A. My final three or four years in the company. 11 It was something Land O' Lakes contracted for us to 12 use. 13 Q. Well, Mr. Hodges here is talking about the 14 use of IRI market data in 2006. Do you see that? He 15 says, "Jennifer, this is something I do each week for 16 Kroger corporate that you can help me with. I would 17 also like to know if you are interested in doing some 18 analytical work with IRI market data. Call me 19 tomorrow if you get a chance." So it's your 20 recollection that Moark did not have a subscription 21 at that time? 22 A. This information was prepared directly by 23 Bob Hodges to his customers. I didn't have a lot of 24 visibility into this particular piece, this report.</p>

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<p style="text-align: right;">Page 70</p> <p>1 I have seen it before because it came to me via copy, 2 and I didn't recall what the dates were on that. 3 Yes, that's correct, it would have been during that 4 time period. 5 Q. What is AC Nielsen, sir? 6 A. It's a competing market data firm with IRI. 7 Just another source. 8 Q. During the period of time you were at Moark, 9 did Moark subscribe to AC Nielsen data? 10 A. We did. 11 Q. For what purpose did Moark use IRI and AC 12 Nielsen data? 13 A. Because the customer requested it, such as 14 Kroger, or we used it to provide category management 15 services to our customers. 16 Q. What are category management services? 17 A. Market intelligence. 18 Q. So you tell them what's going on in the 19 market? 20 A. We tell them what's going on. We advise 21 them on how to optimize their egg sets, where they're 22 selling, where they're not. 23 Q. So you, on a periodic basis, would receive 24 information about the retail audits?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Do you recall authoring this e-mail? 2 A. No, I don't. But I did appreciate my sense 3 of humor, I have to add that, in the middle of the 4 sentence. 5 Q. I have to agree to that too. 6 I don't remember if I asked you this. Do 7 you remember -- we can go away from that now. We 8 talked a little bit earlier about you being a member 9 of a number of UEP committees and the board. Do you 10 remember when you first became a member of the UEP 11 executive committee? 12 A. 2008. I don't recall the exact date. 13 Q. Showing you what I'd like to be marked as 14 Exhibit 13. 15 (Exhibit No. 13 was marked as requested.) 16 MR. SCHIRMER: Exhibit 13 a document bearing 17 Bates No. MOARK0005547 through 5548. 18 BY MR. SCHIRMER: 19 Q. This is an e-mail, the top part is an e-mail 20 from Gene Gregory to, I take it, you? 21 A. Yes. 22 Q. Dated Wednesday, October 10, 2007. Does 23 this refresh your recollection as to when you were 24 appointed to the executive committee of the UEP?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Very infrequently would I receive this. 2 This was the kind of detail that was handled by our 3 sales staff. 4 Q. Showing you what's to be marked as 5 Exhibit 12. 6 (Exhibit No. 12 was marked as requested.) 7 MR. SCHIRMER: This is a document bearing 8 Bates Nos. MOARK0030736 through 743. It's dated 9 December 9, 2008. 10 BY MR. SCHIRMER: 11 Q. What is this Mr. Willardson? 12 A. This is an e-mail from me to David Cisneros. 13 Q. Who is David Cisneros? 14 A. He was a Moark employee who was based in 15 Minneapolis at the time. He was our director of M&A, 16 mergers and acquisitions. 17 Q. For Moark? 18 A. For Moark. 19 Q. Who was David Holdsworth? 20 A. He was also a Moark employee based in 21 Minneapolis. 22 Q. What was his job? 23 A. He was on the marketing team. He was one of 24 those market analysts.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Yes. I was off by a year. 2 Q. It was 2007? 3 A. 2007, thank you. 4 Q. What did the executive committee do? Excuse 5 me. 6 What were the roles and responsibilities of 7 the UEP executive committee during the time you were 8 a member of the executive committee? 9 A. We would myth meet and discuss high level 10 topics that were of interest and importance to the 11 UEP across a variety of different areas and would -- 12 would report those back to the membership. 13 Q. Did the executive committee have any 14 decision-making authority on behalf of UEP? 15 A. For matters that needed to go before the 16 board, no. 17 Q. I'm not certain I understand. 18 A. It didn't have any independent 19 decision-making ability or responsibility. 20 Q. Showing you what is to be marked as 21 Exhibit 14 to your deposition. 22 (Exhibit No. 14 was marked as requested.) 23 BY MR. SCHIRMER: 24 Q. This is a document bearing Bates No.</p>

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<p style="text-align: right;">Page 74</p> <p>1 MOARK0007549 through 7563.</p> <p>2 This was produced from your files or your</p> <p>3 custodial files. Do you have an understanding of</p> <p>4 what this document is?</p> <p>5 A. Looks like it's an overview of the UEP, UEP</p> <p>6 organization, its function, different committees.</p> <p>7 Q. The services it provides?</p> <p>8 A. Services it provides, yes.</p> <p>9 Q. And if you look on the -- the back page or</p> <p>10 page 13, page 62, not the back page but the second to</p> <p>11 back page, you are listed as a board member.</p> <p>12 A. Yes.</p> <p>13 Q. For 2008? As the secretary of UEP?</p> <p>14 A. Correct.</p> <p>15 Q. Do you have a recollection as to whether</p> <p>16 this was produced in -- in or around 2008?</p> <p>17 A. I don't have a recollection of when it was</p> <p>18 produced.</p> <p>19 Q. Well, okay. It was produced at a time when</p> <p>20 they knew you were going to be a board member for</p> <p>21 2008?</p> <p>22 MS. JACOBSEN: Objection to form.</p> <p>23 BY MR. SCHIRMER:</p> <p>24 Q. The second to last page says 2008 board of</p>	<p style="text-align: right;">Page 76</p> <p>1 it. I'm trying to get an area for when it could have</p> <p>2 been produced, that's all.</p> <p>3 On the first page it says UEP filed. Do you</p> <p>4 know whose handwriting that is?</p> <p>5 A. That's my handwriting.</p> <p>6 Q. Did you have a file that related to UEP and</p> <p>7 -- UEP?</p> <p>8 A. I did.</p> <p>9 Q. Was it in a Redwell?</p> <p>10 A. It was similar to that, kept in a</p> <p>11 traditional file drawer.</p> <p>12 Q. In your office?</p> <p>13 A. In my office.</p> <p>14 Q. And we said this is an overview of the</p> <p>15 services provided by UEP?</p> <p>16 A. Yes.</p> <p>17 Q. And other things, and other activities UEP</p> <p>18 engaged in?</p> <p>19 A. Yes.</p> <p>20 Q. And to your knowledge, is this an accurate</p> <p>21 -- let's look, for example, at page one,</p> <p>22 MOARK00007550. Is it -- is the description of the</p> <p>23 services provided to the industry on that accurate as</p> <p>24 to your understanding?</p>
<p style="text-align: right;">Page 75</p> <p>1 directors.</p> <p>2 A. I'm not sure I understand your question. I</p> <p>3 was nominated in 2007, I was on the board in 2008.</p> <p>4 Q. So the point is it wasn't produced in 2006,</p> <p>5 it could only have been produced after that period of</p> <p>6 time when you were nominated and became secretary of</p> <p>7 the board of directors?</p> <p>8 A. I'm sorry, I missed the reference to 2006.</p> <p>9 Q. This couldn't have been produced in 2006</p> <p>10 because you weren't the treasurer and weren't going</p> <p>11 to be the treasurer or the secretary of UEP in 2006.</p> <p>12 MS. JACOBSEN: Objection to form.</p> <p>13 BY MR. SCHIRMER:</p> <p>14 Q. No one knew you were going to be the</p> <p>15 secretary of UEP in 2006, did they?</p> <p>16 MS. JACOBSEN: Objection to form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. No, they didn't -- I'm sorry, I don't</p> <p>19 understand where you're getting -- referring to 2006.</p> <p>20 BY MR. SCHIRMER:</p> <p>21 Q. When is the earliest date this could have</p> <p>22 been produced, and you said you were elected in 2007</p> <p>23 which means the earliest date this probably could</p> <p>24 have been produced in 2007. I don't see a date on</p>	<p style="text-align: right;">Page 77</p> <p>1 A. I can't speak to the history going back to</p> <p>2 1968.</p> <p>3 Q. But during the time you were president --</p> <p>4 you were president and CEO of Moark, is this an</p> <p>5 accurate description of the services United Egg</p> <p>6 Producers provided to the industry?</p> <p>7 A. Yes.</p> <p>8 Q. Is it accurate -- is it your understanding</p> <p>9 that this is an accurate description of the services</p> <p>10 provided by UEP during the entire time you were at</p> <p>11 Moark?</p> <p>12 A. To the best of my understanding, yes. I</p> <p>13 can't speak to all these committees on here. I</p> <p>14 wasn't involved with them.</p> <p>15 Q. Please turn -- it says page three on the</p> <p>16 bottom, MOARK0007552. It talks about -- it says</p> <p>17 Government Relations on the top. What is -- I'm not</p> <p>18 certain -- what is EggPAC?</p> <p>19 A. EggPAC is the political action committee</p> <p>20 that is part of the UEP services provided where</p> <p>21 members would fund the PAC for political donations.</p> <p>22 Q. Is EggPAC an entity separate from UEP? Do</p> <p>23 you have an understanding --</p> <p>24 A. I don't know.</p>

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<p style="text-align: right;">Page 78</p> <p>1 Q. Okay. That's what I was trying to get at. 2 One of the things it says on the first page 3 is it talks about production and marketing 4 information, that UEP provided that to the industry. 5 What is -- do you have an understanding of what that 6 refers to? 7 A. That would refer to industry-related 8 information that would either be generated -- sourced 9 from the USDA or from the Egg Industry Center or any 10 other organization that the UEP would gather, 11 compile, and distribute. Egg production on the 12 inside, I can't tell you exactly what the marketing 13 kind of information. Perhaps Urner-Barry market 14 trends. I don't know for sure. 15 Q. Do you have an understanding of what was 16 referred to when it said unified industry leadership? 17 A. Is that in the document? 18 Q. It's on the first page. I was actually 19 reading from the first page. It says on page one, 20 7550, one of the things it provided as services to 21 the industry was production and marketing 22 information. That was my first question. Now I 23 asked do you have an understanding of what the -- 24 what they mean when they say they provide service of</p>	<p style="text-align: right;">Page 80</p> <p>1 (Exhibit No. 15 was marked as requested.) 2 MR. SCHIRMER: This was previously marked 3 Exhibit 31 to Bob Hodges' deposition. 4 BY MR. SCHIRMER: 5 Q. What is Exhibit 15, Mr. Willardson? 6 A. This is an e-mail from me to Gene Gregory 7 dated April 13, 2006. 8 Q. And what were you -- what was the subject of 9 the e-mail? 10 A. Flock reduction. 11 Q. And what were you telling Mr. Gregory? 12 A. I was telling him that we were -- we had 13 scheduled, we had planned to reduce our flocks via 14 disposal and molt by four weeks, which as I recall 15 from this time frame, was not what the UEP 16 recommended. 17 Q. Well, didn't you say, "If you wish to let 18 the industry know that the major producers such as 19 Moark and others are participating, feel free"? 20 A. Yes. 21 Q. If that wasn't what they -- what UEP had 22 recommended, why would you say to Mr. Gregory if you 23 want to let everybody knows that we are 24 participating, feel free?</p>
<p style="text-align: right;">Page 79</p> <p>1 unified industry leadership? 2 A. No, I don't know what the -- what the intent 3 was for that. 4 Q. Did there come -- during the time period you 5 were CEO of -- president and CEO of Moark, did UEP 6 have what it called programs by which it recommended 7 that producers, as a group, engage in early molting 8 and early kills of their flocks? 9 A. Yes. 10 Q. Did Moark participate in any of those 11 programs? 12 A. Everything we did at Moark was independent, 13 as it was before my tenure, of the UEP's 14 recommendations. In some cases they correlated with, 15 but we were -- we did that independent. 16 Q. Did you ever tell UEP that you were 17 following the UEP -- a UEP molting -- 18 A. I did. 19 Q. -- recommendation? 20 A. I did. With good will. I don't -- it might 21 not have been following it directly, but we did -- we 22 mentioned we were participating. 23 Q. Showing you what is to be marked as 24 Exhibit 15.</p>	<p style="text-align: right;">Page 81</p> <p>1 A. It was a gesture of good will. It was a 2 unified... 3 Q. Showing you what is to be marked as 4 Exhibit 16. 5 (Exhibit No. 16 was marked as requested.) 6 BY MR. SCHIRMER: 7 Q. This is a dated a week before the previous 8 e-mail? 9 A. Correct. 10 Q. And this is -- what is this document? It's 11 -- it was originally marked as Hodges Exhibit 30, 12 Bates label MOARK00037086. 13 A. This is an e-mail from me to the Moark 14 senior management team and Dan Knutson talking about 15 our planned adjustment to our flock schedules by four 16 weeks. 17 Q. By four weeks. That's underlined here, four 18 weeks? 19 A. Yes. 20 Q. And it's your recollection that this is not 21 what UEP was recommending at the time? 22 A. No, UEP was recommending -- as I recollect 23 at this point, UEP was recommending a six-week early 24 molt and kill. We met, as we always did -- this was</p>

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<p style="text-align: right;">Page 82</p> <p>1 -- this was right around the Easter period, so Easter 2 had just passed, and typically after the Easter 3 period, we review our schedules. So we had met as a 4 company, as we did every year, every seasonal period, 5 and made our own decision as what we were going to do 6 with the flocks. Do reduce them? Do we go 7 three weeks, four weeks, six weeks? And we decided 8 not to follow the UEP recommendation, but still go 9 four weeks with that. 10 Q. In the second paragraph you wrote, "As you 11 recall from the recent UEP report, the egg industry 12 produces a surprisingly large number of eggs from May 13 to September, the lowest demand time of the year, and 14 needs to take action cutting back post Easter." Do 15 you see that? 16 A. Yes. 17 Q. I take it that was correct at the time and 18 it's been correct every year? 19 A. It was certainly correct at that time. 20 Q. It says, "Cal Maine confirmed they have 21 begun a similar program for next week." 22 A. Yes. 23 Q. How do you know that? 24 A. I knew that because Cal Maine because was a</p>	<p style="text-align: right;">Page 84</p> <p>1 UEP meeting? 2 A. I'm speculating. I don't know. 3 Q. I'm just wondering why -- did you know 4 Mr. Baker, Dolph Baker? 5 A. Yes. 6 Q. So you never called him up and said, Dolph, 7 let's coordinate our flock molting and kill 8 schedules? 9 A. No, Cal Maine was by far the largest 10 producer in the country with two and a half times as 11 many birds as we had. What they did would not 12 necessarily relate to what we did. They operated 13 independent markets from us, different markets. They 14 -- there was not that much correlation, but we knew 15 -- they were the operators of Delta Egg Farm, we were 16 the joint venture partners. To the extent that they 17 had -- had made a decision for Delta, we respected 18 that and we -- and we planned -- we planned on our 19 own. We might have followed the same thing, we might 20 not have. 21 Q. You just said Cal Maine's markets were not 22 correlated with yours necessarily. Were they not one 23 of Moark's major competitors? 24 A. They were a competitor. They were very</p>
<p style="text-align: right;">Page 83</p> <p>1 joint venture and partner of ours on a project called 2 Delta Eggs in the state of Utah and we sat on the 3 board with three Cal Main members, so we discussed 4 what Cal Maine was intending to do. They were the 5 operators of that joint venture in Utah. So we would 6 discuss what are you doing with the JV, what was your 7 recommendation, and would -- would consider that with 8 what we were doing. 9 Q. Did -- so this relates only to Delta Egg 10 Farm? 11 A. This relates only to Delta Egg Farm. 12 Q. Did you ever discuss with Cal Maine what its 13 plans were with regard to its timing of its flock 14 molts? 15 A. No. 16 Q. Why not? 17 A. They were a competitor of ours. 18 Q. Well, you discuss -- you got information 19 from them with regard to the joint venture which they 20 controlled. 21 A. That doesn't mean that Cal Maine wouldn't 22 have discussed it at a UEP meeting. 23 Q. I'm sorry, I don't understand. Cal Maine 24 might have said what they were planning to do at a</p>	<p style="text-align: right;">Page 85</p> <p>1 strong in the Southeast and in certain parts of the 2 Midwest. Our greatest strength was in the West Coast 3 and the Northeast. 4 Q. Who were your primary competitors in the 5 Northeast at that time? 6 A. At that time, it would have been Decoster 7 Eggs, Radlo foods, Kreher Farms out in New York. 8 Q. And who have been your primary competitors 9 in the West? 10 A. In the West it would've been Hidden Villa 11 Ranch, Hickman Egg in the West, NuCal Foods. 12 Q. Did you ever call the chief executive 13 officer of Hidden Villa Ranch, Hickman Eggs, or NuCal 14 Foods and suggest that you all have the same flock 15 molting schedules? 16 MS. JACOBSEN: Objection to form. 17 BY THE WITNESS: 18 A. No. 19 BY MR. SCHIRMER: 20 Q. Why not? 21 A. Well, some of those players didn't even have 22 chickens, they were a competitors. Hidden Villa 23 Ranch, for example was a very large, prominent 24 competitor.</p>

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<p style="text-align: right;">Page 86</p> <p>1 Q. Didn't own any chickens?</p> <p>2 A. Didn't own any chickens.</p> <p>3 Q. How about Hickman? Did they own chickens?</p> <p>4 A. They own chickens.</p> <p>5 Q. Did you call them?</p> <p>6 A. I didn't.</p> <p>7 Q. Do you know if anybody at Moark did?</p> <p>8 A. I don't know if anyone at Moark did.</p> <p>9 Q. During the period of time you were chairman</p> <p>10 and chief executive officer of Moark, did Moark have</p> <p>11 a formal compliance program that addressed antitrust</p> <p>12 issues?</p> <p>13 MS. JACOBSEN: Objection to form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. What do you mean by formal compliance</p> <p>16 program?</p> <p>17 BY MR. SCHIRMER:</p> <p>18 Q. Did you have training of Moark executives</p> <p>19 that would address compliance with the antitrust</p> <p>20 laws?</p> <p>21 A. Yes.</p> <p>22 Q. Did there come a time when Moark ceased to</p> <p>23 be a member of UEP?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. DAVIS: Thank you.</p> <p>2 MR. SCHIRMER: Sure.</p> <p>3 BY MR. SCHIRMER:</p> <p>4 Q. What is this document?</p> <p>5 A. On the top it is an e-mail from Arnie Sumner</p> <p>6 to Joe Fortin dated November 29, 2004, regarding UEP</p> <p>7 economic summit.</p> <p>8 Q. Now at the bottom of 2895 and on 28958,</p> <p>9 that's 957 and 958, is that -- what is that? It says</p> <p>10 original message.</p> <p>11 A. Yes, okay, original message is a -- this is</p> <p>12 an e-mail from me to Joe Fortin dated November 26,</p> <p>13 2004.</p> <p>14 Q. It says Subject, UEP Economic Summit. What</p> <p>15 was the UEP Economic Summit. Do you recall?</p> <p>16 A. I don't know. I didn't attend the Economic</p> <p>17 Summit.</p> <p>18 Q. Do you know whether Mr. Fortin did?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know whether anybody from Moark did?</p> <p>21 A. It's ten years ago. I really don't know.</p> <p>22 Q. It says, "Joe, I received a form from Moark</p> <p>23 that asks for a signature for intention to meet</p> <p>24 market needs. Did you already sign one on behalf of</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. When was that?</p> <p>2 A. 2010.</p> <p>3 Q. Why?</p> <p>4 A. Advice of counsel.</p> <p>5 Q. Who made that decision?</p> <p>6 MS. JACOBSEN: Objection to form.</p> <p>7 BY MR. SCHIRMER:</p> <p>8 Q. Who made the decision that Moark would no</p> <p>9 longer be a member of UEP?</p> <p>10 A. It came from counsel.</p> <p>11 Q. Did you, acting upon counsel's</p> <p>12 recommendation, make the decision for Moark that it</p> <p>13 would no longer be a member of UEP?</p> <p>14 A. Yes.</p> <p>15 MR. SCHIRMER: This is 17.</p> <p>16 (Exhibit No. 17 was marked as requested.)</p> <p>17 BY MR. SCHIRMER:</p> <p>18 Q. Showing you what has been marked as</p> <p>19 Exhibit 17 to your deposition Bates labeled</p> <p>20 MOARK208957 through 58.</p> <p>21 MR. DAVIS: Excuse me, the streaming</p> <p>22 stopped, and I missed the Bates number.</p> <p>23 MR. SCHIRMER: Okay. It's MOARK0028957</p> <p>24 through 958.</p>	<p style="text-align: right;">Page 89</p> <p>1 Moark?" Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. You said, "We can talk Monday during the</p> <p>4 conference call." Do you remember whether he had</p> <p>5 signed that form to -- at or around this time?</p> <p>6 A. No, I don't remember.</p> <p>7 Q. Among the services UEP provided, said it</p> <p>8 provided the industry, was the Animal Care Certified</p> <p>9 Program. Do you remember what that program was, sir?</p> <p>10 A. Yes.</p> <p>11 Q. What was it?</p> <p>12 A. The Animal Care Certified Program was a</p> <p>13 program developed by the UEP and other -- by an</p> <p>14 independent panel in response to the customers'</p> <p>15 interest, animal activist pressure. It was a program</p> <p>16 to -- to put in place greater animal welfare at the</p> <p>17 time.</p> <p>18 Q. Do you remember what some of the basic</p> <p>19 provisions of the animal welfare program were?</p> <p>20 A. Yes.</p> <p>21 Q. What were some of them?</p> <p>22 A. Some of them were -- the primary provision</p> <p>23 was for cage space allowance, and that was -- that</p> <p>24 was of most interest to the -- to the parties such as</p>

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<p style="text-align: right;">Page 90</p> <p>1 the activists and the customers.</p> <p>2 Q. Do you recall whether there were -- part of</p> <p>3 the program involved annual audits?</p> <p>4 A. Yes.</p> <p>5 Q. What happened during those audits?</p> <p>6 A. Yeah, either the USDA or another outside</p> <p>7 service would come perform an audit based on a list</p> <p>8 of criteria to ensure that we were meeting the</p> <p>9 program and they established points and assessed each</p> <p>10 producer, and assessed their compliance with the</p> <p>11 Animal Care Certified Program.</p> <p>12 Q. Now you said they established points, so for</p> <p>13 various categories of issues or rules, points were</p> <p>14 established?</p> <p>15 A. Yes.</p> <p>16 Q. A point value was established?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall whether, during the time you</p> <p>19 were at Moark, a failure to meet the cage space</p> <p>20 allowance guidelines was -- would cause a company to</p> <p>21 fail an audit?</p> <p>22 A. My recollection is that it would cause an</p> <p>23 audit failure.</p> <p>24 Q. Do you remember if there came a time when</p>	<p style="text-align: right;">Page 92</p> <p>1 A. That's -- that's what I was referencing.</p> <p>2 Q. There's the Humane Society and American</p> <p>3 Humane Association?</p> <p>4 A. Sorry, American Humane Association. Not to</p> <p>5 be confused with the Humane Society of America.</p> <p>6 Q. Fair enough.</p> <p>7 MR. SCHIRMER: Let's take a break.</p> <p>8 THE VIDEOGRAPHER: We are going off the</p> <p>9 video record at 11:43 a.m.</p> <p>10 (A short break was taken.)</p> <p>11 THE VIDEOGRAPHER: We are back on the video</p> <p>12 record at 11:59 a.m.</p> <p>13 BY MR. SCHIRMER:</p> <p>14 Q. Before we broke, I showed you a couple of</p> <p>15 e-mails that you wrote to people at Moark and then to</p> <p>16 Mr. Gregory regarding flock reduction, accelerated</p> <p>17 flock kills. Do you remember whether Moark came to</p> <p>18 the conclusion that that program, I guess in</p> <p>19 conjunction with Cal Maine's similar program, had an</p> <p>20 effect on egg prices?</p> <p>21 MS. JACOBSEN: Objection to form.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I have no idea if that had a direct impact</p> <p>24 on egg prices.</p>
<p style="text-align: right;">Page 91</p> <p>1 backfilling would cause a company to fail and audit</p> <p>2 unless that backfilling was done in response to a</p> <p>3 catastrophic situation?</p> <p>4 A. I don't recall if backfilling was -- was --</p> <p>5 merited failure.</p> <p>6 Q. Do you know of any other auditing programs</p> <p>7 in the industry, any other animal welfare programs,</p> <p>8 that are audited in the industry?</p> <p>9 A. There's -- the American Humane Society does</p> <p>10 audits. There are other certifying groups that are</p> <p>11 separate from the UEP that, at customer requests,</p> <p>12 will do audits of producers.</p> <p>13 Q. You just said something I'm not certain I</p> <p>14 understand. You said at customer requests they will</p> <p>15 do audits of producers. What do you mean by that?</p> <p>16 A. Well, if a customer is carrying a specialty</p> <p>17 egg, for example, and they want it to have the -- the</p> <p>18 seal of a certain group, such as American Humane,</p> <p>19 they could request that from their supplier. In some</p> <p>20 cases, it was the UEP certified logo only, or it</p> <p>21 could be one of these other -- other auditing</p> <p>22 certifying groups.</p> <p>23 Q. Have you ever heard of a group called the</p> <p>24 American Humane Association?</p>	<p style="text-align: right;">Page 93</p> <p>1 (Exhibit No. 18 was marked as requested.)</p> <p>2 BY MR. SCHIRMER:</p> <p>3 Q. Showing you what has been marked as</p> <p>4 Exhibit 18. This is a document that was produced as</p> <p>5 Moark -- and there's two pages here, but it's 0037125</p> <p>6 and 37127, which was the -- this was, based upon the</p> <p>7 way this was produced, the attachment to the e-mail</p> <p>8 that's in the front from your file, sir.</p> <p>9 The second page of the exhibit is simply</p> <p>10 something for reference so that you'd know what -- so</p> <p>11 everyone would know when they're looking at it where</p> <p>12 it was produced from and what the Bates number was on</p> <p>13 the first page. It was printed in native form, the</p> <p>14 form in which -- in the native form in which it was</p> <p>15 produced, okay?</p> <p>16 Do you have an understanding as to what this</p> <p>17 document is, sir?</p> <p>18 A. Yes, I do.</p> <p>19 Q. What is it?</p> <p>20 A. This would be a -- one of the regular</p> <p>21 performance reports given by each of our three</p> <p>22 regions throughout the year.</p> <p>23 Q. Can you turn to the -- I guess it's the</p> <p>24 third page of this document, of this -- fourth page.</p>

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<p style="text-align: right;">Page 94</p> <p>1 One, two, three, fourth. It says Moark Highlights on 2 the top. It's not that page, it would be this page, 3 which is right after the opening page of the report. 4 A. Oh, yes. 5 Q. The second page of the report. Once you 6 have a look at that, I'm going to ask you a couple 7 questions. 8 Do you know for whom this report was 9 prepared? 10 A. This report would be prepared for the senior 11 management team of Moark and the chairman of Moark's 12 board. 13 Q. Who prepared this document, do you know? 14 A. This would have been from Jerry Kil and his 15 group. 16 Q. And the first page is an e-mail? 17 A. Yes. 18 Q. There is an e-mail from Mr. Kil to Dan 19 Knutson, you, Mr. Hudgens, Mr. Fortin, Mr. Dent, and 20 Mr. Hodges? 21 A. Correct. 22 Q. And then you forwarded this to Mike Lamere 23 and Jennifer Reinhart. That's on the front page. 24 MS. JACOBSEN: I don't think we have that.</p>	<p style="text-align: right;">Page 96</p> <p>1 increased market levels has far exceeded the reduced 2 efficiency and impact on the bottom line." Is that 3 consistent with your understanding of what happened 4 at the time, sir? 5 MS. JACOBSEN: Objection to form. 6 BY THE WITNESS: 7 A. That's Jerry Kil's observation at the time. 8 BY MR. SCHIRMER: 9 Q. At the time was that consistent with your 10 understanding of the market? 11 MS. JACOBSEN: Objection to form. 12 BY THE WITNESS: 13 A. At the time it was one potential factor 14 which could have impacted the market. 15 BY MR. SCHIRMER: 16 Q. Then why did he say, "The benefit of the 17 increased market levels has far exceeded the reduced 18 efficiency and impact on the bottom line"? 19 MS. JACOBSEN: Objection to form. 20 BY THE WITNESS: 21 A. It's what Jerry Kil believed. 22 BY MR. SCHIRMER: 23 Q. Mr. Kil was -- 24 A. Vice president of operations.</p>
<p style="text-align: right;">Page 95</p> <p>1 THE WITNESS: I don't see that. We just 2 have one document. Is there another document? 3 BY MR. SCHIRMER: 4 Q. You just have it from Jerry Kil? 5 A. Yes. 6 Q. Okay. The exhibit is actually MOARK0037126, 7 not 125, which is just the e-mail from Mr. Kil to 8 Mr. Knutson. I printed out the wrong page. I 9 actually have the page where you forwarded that 10 e-mail to Mr. Lamere, but that's okay. 11 If you'll turn to the second page of the 12 highlights, it said -- it says, "The early molt kill 13 has impacted efficiencies and the per-dozen cost 14 production amortization and processing when compared 15 with prior months or previous years." Do you have an 16 understanding of what Mr. Kil was -- meant when he 17 wrote that in this Highlights section of this report? 18 A. Yes, I do. 19 Q. What did he mean? 20 A. He was referring to the fact that with fewer 21 hens in existing cage space, we're going to have 22 greater fixed costs per dozen eggs produced because 23 we have obviously less hens to produce those eggs. 24 Q. Now Mr. Kil then writes, "The benefit of</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. How long had he been in the egg business at 2 that point in time? 3 A. At least 25 or 30 years by that point. 4 Q. And you said it was what Mr. Kil believed at 5 the time? 6 A. Yes. 7 Q. And Mr. Kil was reporting this to you and 8 you were his boss? 9 A. He was reporting it to me. I didn't alter 10 or suggest any of his presentation. 11 Q. Okay. 12 A. Didn't approve them. 13 Q. Did you disapprove them? 14 A. No. 15 Q. Okay. Do you recall discussing this 16 presentation with Mr. Kil at the time? 17 A. We discussed every presentation, so I don't 18 recall it, but I'm sure I did. 19 Q. Do you recall telling Mr. Kil, discussing 20 the section on -- discussing the benefit of the 21 increased market levels has far exceed the reduced 22 efficiency and impact o the bottom line with Mr. Kil 23 at any meeting? 24 A. I remember that topic coming up at various</p>

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<p style="text-align: right;">Page 98</p> <p>1 times. We were all quick to try and explain market 2 changes. I'm sure we discussed it. 3 Q. Do you remember telling Mr. Kil he was 4 wrong? 5 A. No. 6 Q. We were just -- I don't think I'll come back 7 to that topic today. 8 We were talking a little bit earlier about 9 the Animal Care Certified Program, and you talked 10 about the American Humane Association. I'd like to 11 show you a document, Exhibit 19 to your deposition. 12 (Exhibit No. 19 was marked as requested.) 13 MR. SCHIRMER: This bears Bates Nos. 14 MOARK-IPP-0028024 through 028. 15 BY MR. SCHIRMER: 16 Q. Do you understand what this document and the 17 attachment is, sir? 18 A. Yes, as I'm reading it through, I am 19 understanding it. 20 Q. What is it? If you need more time, that's 21 fine. 22 A. I do need a little bit more time. 23 Q. Okay. 24 A. Okay.</p>	<p style="text-align: right;">Page 100</p> <p>1 terms of that agreement? 2 A. I don't recall all the details, I just knew 3 that it was a benefit for those that were concerned 4 about cost. 5 Q. Do you know whether the American Humane 6 Association has its own standards for space 7 allowances to be given to caged hens? 8 A. No, I don't. 9 Q. Would you surprised to find out that they 10 do? 11 MS. JACOBSEN: Objection to form. 12 BY THE WITNESS: 13 A. No. 14 BY MR. SCHIRMER: 15 Q. Would you -- are there -- in your experience 16 with the American Humane Association's standards more 17 stringent than those of the UEP? 18 MS. JACOBSEN: Objection to form. 19 BY THE WITNESS: 20 A. I can't say. 21 BY MR. SCHIRMER: 22 Q. Would you be surprised to find out that 23 their standards for cage space do not require an 24 automatic failure of its -- of an AHA audit if a</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. What is this, sir? 2 A. This is a press release from the UEP 3 announcing an animal welfare auditing relationship 4 with the American Humane Association, and on the 5 cover is -- is an e-mail referencing helping Stan; 6 Stan was our sales director in 2008 at Moark West. 7 Fresh and Easy was a new customer we had with, as I 8 recall, very strict requirements about -- about their 9 humane certifications and they would have required an 10 American Humane Association approval or logo. 11 Q. And is this reflecting an agreement between 12 the UEP and AHA that an AHA audit would be sufficient 13 for UEP purposes? 14 MS. JACOBSEN: Objection to form. 15 BY THE WITNESS: 16 A. That's what it says. I don't recall this 17 document from this time frame. 18 BY MR. SCHIRMER: 19 Q. Well, do you recall that the -- while you 20 were on the board of the UEP, it entered into an 21 agreement with the American Humane Association 22 regarding auditing? 23 A. Yes, I do. 24 Q. And do you recall the -- in general, the</p>	<p style="text-align: right;">Page 101</p> <p>1 member or company does not meet the cage space 2 requirements? 3 MS. JACOBSEN: Objection. Objection to 4 form. 5 BY THE WITNESS: 6 A. I guess I would be surprised. 7 BY MR. SCHIRMER: 8 Q. Have you ever seen American Humane -- humane 9 certified animal welfare standards? 10 A. I haven't read through them. I'm familiar 11 with their documents. We used to receive 12 certifications from them as needed, but I haven't 13 read the standards. I wouldn't be familiar. 14 Q. And you haven't read the audit standards? 15 A. No. 16 Q. Okay. Now we talked some today about the 17 UEP Animal Care Certified Program. We talked about 18 the -- what you called, I think, one of the main 19 issues that was involved, the cage space that was to 20 be given to each chicken. Is that right? 21 A. Mm-hmm, yes. 22 Q. Were there also standards with what you do 23 with spent hens? 24 A. Yes, there were standards for spent hens.</p>

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<p style="text-align: right;">Page 102</p> <p>1 Q. And was that called depopulation practices?</p> <p>2 A. Depopulation practices?</p> <p>3 Q. Yeah, depopulation.</p> <p>4 A. That's another term that's used, yes.</p> <p>5 Q. What does that mean?</p> <p>6 A. It just means removing -- at the end of</p> <p>7 their useful laying life, removing hens from</p> <p>8 production and humanely euthanizing them.</p> <p>9 (Exhibit No. 20 was marked as requested.)</p> <p>10 BY MR. SCHIRMER:</p> <p>11 Q. Showing you what has been marked as</p> <p>12 Exhibit 20 to your deposition, sir.</p> <p>13 A. Sorry, what was your question?</p> <p>14 Q. About to ask a question. The Bates number</p> <p>15 on this is MOARK0005651. I even got all the zeros</p> <p>16 right.</p> <p>17 What is this, Mr. Willardson?</p> <p>18 A. This is an e-mail from me to Gene Gregory</p> <p>19 dated August 21, 2006, regarding UEP practice for our</p> <p>20 New Mexico facility.</p> <p>21 Q. Now when you say -- you say in this e-mail,</p> <p>22 "I agree we need to be in compliance with the latest</p> <p>23 UEP guidelines. No mention was made in past audits.</p> <p>24 Don Brown, our production manager, has informed me</p>	<p style="text-align: right;">Page 104</p> <p>1 A. That's all I know.</p> <p>2 Q. That's enough for me.</p> <p>3 MR. SCHIRMER: Why don't we take a break</p> <p>4 now? The next section is going to go for a while.</p> <p>5 THE VIDEOGRAPHER: We are going off the</p> <p>6 video record at 12:17 p.m.</p> <p>7 (A short break was taken.)</p> <p>8 THE VIDEOGRAPHER: We are back on video</p> <p>9 record at 1:20 p.m.</p> <p>10 BY MR. SCHIRMER:</p> <p>11 Q. When we finished a little earlier, you were</p> <p>12 talking a little bit about the UEP Certified Program,</p> <p>13 and you talked about some -- one of the things was</p> <p>14 the cage space was different. Have you ever been</p> <p>15 inside of some of chicken houses at Moark?</p> <p>16 A. Yes.</p> <p>17 Q. Have you seen the cages?</p> <p>18 A. I have seen the cages.</p> <p>19 MR. SCHIRMER: Can we mark these two please?</p> <p>20 (Exhibit Nos. 21 and 22 were marked as</p> <p>21 requested.)</p> <p>22 BY MR. SCHIRMER:</p> <p>23 Q. Showing you what has been marked as</p> <p>24 Exhibits 21 and 22 to your deposition; 21 bearing</p>
<p style="text-align: right;">Page 103</p> <p>1 we've already ordered standard kill carts for</p> <p>2 depopulation." What were kill carts?</p> <p>3 A. Kill carts were the -- it was a mechanism to</p> <p>4 remove birds from the cage once they had been -- had</p> <p>5 been removed and then euthanized to take them out and</p> <p>6 accumulate the carcasses.</p> <p>7 Q. What is -- do you have an understanding of</p> <p>8 what modified atmosphere killing is?</p> <p>9 A. That's the use of the CO2 in the kill carts.</p> <p>10 Q. Maybe I misunderstood what kill carts are.</p> <p>11 I understood you to say it's what you take them away</p> <p>12 from -- after you've killed them?</p> <p>13 A. No, I'm sorry, it's when they go into the</p> <p>14 kill cart.</p> <p>15 Q. And what happens in the kill cart? I'm just</p> <p>16 trying to understand. What is your understanding of</p> <p>17 how -- of how the kill carts are used for</p> <p>18 depopulation of henhouses?</p> <p>19 A. That's where the modified atmosphere takes</p> <p>20 place and the CO2 is fed. I did not get involved in</p> <p>21 this end of the operation, but that's my</p> <p>22 understanding.</p> <p>23 Q. I can't ask you to tell me anything more</p> <p>24 than you know.</p>	<p style="text-align: right;">Page 105</p> <p>1 Bates Nos. MOARK0016849 through 50, and 22 bearing</p> <p>2 MOARK0016851 through 52. Have you ever seen this</p> <p>3 before?</p> <p>4 A. I've seen something similar.</p> <p>5 Q. Okay.</p> <p>6 A. As this diagram.</p> <p>7 Q. Let's go to Exhibit No. 21. It says at the</p> <p>8 top Big Dutchman, Univent 568-A US Cage Profile.</p> <p>9 Do you know whether Moark has any cages that</p> <p>10 are configured as is the one in Exhibit 21?</p> <p>11 A. Yes, we do.</p> <p>12 Q. Is there a term of art for this type of cage</p> <p>13 configuration?</p> <p>14 A. This looks like a stacked deck manure drying</p> <p>15 belt configuration.</p> <p>16 Q. Now when you say stacked deck, what -- let's</p> <p>17 deal with each part of that.</p> <p>18 A. Okay.</p> <p>19 Q. What do you mean when you say a stacked</p> <p>20 deck?</p> <p>21 A. Meaning the rows of cages are stacked evenly</p> <p>22 on top of each other in the layhouse.</p> <p>23 Q. And when you say manure drying. What does</p> <p>24 that mean?</p>

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<p style="text-align: right;">Page 106</p> <p>1 A. So the manure that falls from the hens goes 2 down to a moving belt underneath each row of cages 3 and it is air dried and removed at the end of the 4 row, so it's a pretty sanitary procedure. 5 Q. And do each of these cages have belts by 6 which the eggs that are laid are taken into the -- 7 A. Yes, a separate belt in front of the cage 8 itself. 9 Q. And on the picture we are looking at, it 10 would be one of these two sides here (indicating)? 11 Where would that be? 12 A. They're on both sides here (indicating). 13 Q. Okay. And there are -- what I'm trying to 14 understand is --and you said both sides. So is this 15 -- this is two cages up top -- let's look at the one 16 on the left. There are one, two, three, four 17 stacked, what looks like four stacked. Is that eight 18 cages? 19 A. That would be eight cages, yes. 20 Q. Okay. So it's two -- a tier of two cages of 21 whatever width you want to buy? 22 A. Right, right. 23 Q. Now look at No. 22. You said you've seen 24 something like this before. Is there a term of art</p>	<p style="text-align: right;">Page 108</p> <p>1 A. This is an older style cage system. 2 Q. And you were in the process of moving them 3 more towards -- 4 A. Towards the stacked deck. The 67-square 5 inch animal care certified. 6 Q. And it says on -- excuse me. Excuse me. On 7 Exhibit 21 that they are designed to satisfy UEP 8 requirements for up to eight birds at 67 inches, 9 right? 10 A. Correct. 11 Q. So this is what you were moving to as you 12 replaced old cages? 13 A. Right. 14 Q. Do you know about how long cages last? 15 A. We used to depreciate them close to 16 20 years. I figure that's a pretty good life. 17 Q. That's a fair estimate of life? 18 A. Yes. 19 Q. Now in the animal care program, is it your 20 recollection -- do you have a recollection as to when 21 the animal certified care program began? 22 A. The first phase was implemented in 2002. It 23 was actually, the program began to be developed in 24 2000. It didn't go into effect until '02.</p>
<p style="text-align: right;">Page 107</p> <p>1 for what this depicts? 2 A. This looks like a -- a deep pit cage 3 configuration. 4 Q. And what is a deep pit cage configuration? 5 A. Where the manure drops directly from the 6 cages straight down into a pit where it's handled and 7 dried and organized, removed eventually. 8 Q. Sorry. I started to interrupt you, I'm 9 sorry. 10 Does Moark have any of these deep pit cage 11 configuration cages -- or let's put it maybe more 12 precise. Did they during the time -- 13 A. Did they, because I've been out of it now 14 for a year. Not only is my memory not what it used 15 to be, but... 16 Q. Forgive me. 17 A. I haven't seen the business for a while. 18 Q. During the time you were at Moark, did they 19 have any cage configuration -- 20 A. Yes, we did. We were in the process of 21 upgrading these and phasing them into the newer 22 cages. 23 Q. So upgrading these? Is that -- it looks 24 like an A to me.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. All right. I'd like to show you what's 2 going to be marked as Exhibit 23 to the deposition. 3 (Exhibit No. 23 was marked as requested.) 4 MR. SCHIRMER: This is a document that was 5 produced as MOARK00000101. That's on the front page 6 of exhibit. That's something I printed out. 7 BY MR. SCHIRMER: 8 Q. Ever seen this document before? 9 A. Yes, I have. 10 Q. What is it? 11 A. And I remember it well. 12 Q. You remember it well? 13 A. I do. 14 Q. Okay. Well, let's talk about it for a 15 couple minutes then. What is the first page of the 16 document itself? 17 A. The first page of the document is a copy of 18 -- it looks like this was in the pre e-mail days, 19 looks like a memo form from Don Brown to me. Don was 20 our director of egg production in the West. 21 Q. And he -- and the subject is UEP Guidelines? 22 A. Yes. 23 Q. And he says, "Craig, the following 24 spreadsheet represents the impact of following UEP</p>

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<p style="text-align: right;">Page 110</p> <p>1 guideline for space allowance." 2 A. Mm-hmm. 3 Q. Did you ask him to do this for you? 4 A. It's not unlikely that I would have. I 5 can't remember if this came from a specific request. 6 Q. If you turn to the next page, the next one, 7 two, three pages that start off with UEP Welfare 8 Guidelines, and the first, I guess, table would that 9 be? 10 A. Yes. 11 Q. It says E&M cage houses only. Now what was 12 E&M? 13 A. E&M was our Fontana, California, production 14 facility. 15 Q. And Mr. Brown created this chart for you, is 16 that correct? 17 A. Yes. 18 Q. And it says, Total Birds Current. That was 19 the number of birds you had in that -- in those 20 houses at E&M at the time this was created? 21 A. That's correct. 22 Q. And then it -- he then lists a number of 23 birds that would be in a house, in those houses, 24 those existing houses, at each of the UEP guidelines</p>	<p style="text-align: right;">Page 112</p> <p>1 different than for white. 2 Q. Because the brown birds are bigger? 3 A. They're bigger. 4 Q. And he didn't -- what Mr. Brown did was he 5 explained what would be the change in the capacity of 6 that house from what you had to what it would be in 7 the future? 8 A. Right. 9 Q. And he -- and then you had McAnally Berino. 10 What was McAnally Berino? 11 A. Berino was our New Mexico facility, and 12 McAnally was the name of the company that we acquired 13 in 2002, so we just identified it by its former name. 14 Q. And you say -- here you have Houses 1 15 through 12. I see tat it says cage space for bird, 16 and I guess that's at the current time which was -- 17 A. Right. 18 Q. -- that was 3-2002, which was -- was 53.3? 19 That's under -- right there (indicating). 20 A. Yeah, there it is. 21 Q. And then he provides you what the capacity 22 of those houses would be in total at that facility 23 under each of the guidelines, is that right? 24 A. That's correct.</p>
<p style="text-align: right;">Page 111</p> <p>1 numbers for space -- 2 A. That's exactly right. 3 Q. Okay. And then there's Romoland is next, 4 and it says something that I don't really understand. 5 It says, Houses 1 through 20, it says total birds 6 current 596,640, no change until 67 square inches. 7 Why would that be? 8 A. Romoland, coincidentally, was already at -- 9 if I remember, it was around 68 inches. It was 10 actually a little bit -- because it was an old house, 11 old series of houses, it was already at, I believe, 12 68 inches at the time, so we didn't make any 13 adjustments. 14 Q. Okay. Then there's Norco Main, white hens, 15 cage houses only, and it says there will be no change 16 in that house. That's because -- is that because, as 17 it suggests here, they were currently already -- you 18 were already giving them 72 inches? 19 A. These were old, large cages. 20 Q. The -- there's one on brown hens, but this 21 was for -- the next one, Norco Main, brown hens, cage 22 houses only, there will be no change until 76 square 23 inches? 24 A. Because the requirement for brown birds was</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Okay. 2 A. Can I go back and correct something on 3 Romoland? 4 Q. Sure. 5 A. You were asking about why -- you pointed out 6 that column. They were at 64 square inches. 7 Q. Yes. 8 A. So that's why they didn't -- there wasn't a 9 change required until it reached 67. 10 Q. And that would be the last year of the -- 11 A. Yeah. 12 Q. Okay. And you were at some -- in the 13 ordinary course of business, Moark was replacing some 14 cages in any event? 15 A. Yes. 16 Q. Okay. Finally, McAnally Lakeview, is that 17 also in New Mexico? 18 A. That's in California, city of Lakeview. 19 Q. My knowledge of California geography is 20 sadly lacking these days. 21 A. I'm sorry to hear that. 22 Q. This is a set of houses in Lakeview, 23 California that were owned by Cal Maine -- I mean by 24 Moark at the time?</p>

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<p style="text-align: right;">Page 114</p> <p>1 A. Yes.</p> <p>2 Q. And once again, Mr. Brown gave you an</p> <p>3 analysis of how fewer hens would be held at each of</p> <p>4 the levels?</p> <p>5 A. Yes.</p> <p>6 Q. Mr. Brown -- and you expect Mr. Brown to do</p> <p>7 his job and do it accurately, didn't you?</p> <p>8 MS. JACOBSEN: Objection to form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Yes.</p> <p>11 BY MR. SCHIRMER:</p> <p>12 Q. Good. I'm going to show you another</p> <p>13 document.</p> <p>14 (Exhibit No. 24 was marked as requested.)</p> <p>15 BY MR. SCHIRMER:</p> <p>16 Q. This is also marked as Hodges No. 21, so</p> <p>17 this is a document bearing Bates number -- what was</p> <p>18 produced as MOARK0000460. If you want to see it, I</p> <p>19 marked this at Mr. Hodges' deposition as Exhibit 20</p> <p>20 or 21, I can't tell from my own handwriting, which...</p> <p>21 BY MR. SCHIRMER:</p> <p>22 Q. Do you know what this document is, sir? Is</p> <p>23 it the same document that was attached to the</p> <p>24 previous --</p>	<p style="text-align: right;">Page 116</p> <p>1 A. No, I didn't have responsibility in the</p> <p>2 Midwest in 2002, or depending on when this was -- I</p> <p>3 don't know when this was prepared, so I didn't work</p> <p>4 with these facilities at that point.</p> <p>5 Q. Is Anderson, Missouri, a Moark facility?</p> <p>6 A. Yes, it is.</p> <p>7 Q. And it has a number of cages there?</p> <p>8 A. Yes.</p> <p>9 Q. Is Boulder Valley a Moark facility?</p> <p>10 A. Yes.</p> <p>11 Q. Is Hathaway, Missouri, a Moark Midwest</p> <p>12 facility?</p> <p>13 A. It is.</p> <p>14 Q. How about Timber View, Missouri?</p> <p>15 A. Yes, it is.</p> <p>16 Q. And Top --</p> <p>17 A. Top notch.</p> <p>18 Q. Top Notch, is that a Moark facility, sir?</p> <p>19 A. Yes, it is.</p> <p>20 Q. And Clearfield, Iowa, is that a Moark</p> <p>21 facility?</p> <p>22 A. Yes.</p> <p>23 Q. If I were to want to find out who -- who</p> <p>24 created this document, who should I talk to?</p>
<p style="text-align: right;">Page 115</p> <p>1 A. I was just comparing numbers. It looks like</p> <p>2 -- looks like it's a variation of the previous</p> <p>3 report.</p> <p>4 Q. Do you know who prepared this document?</p> <p>5 A. I don't. It likely would have been Don.</p> <p>6 Q. You -- do you have an idea of approximately</p> <p>7 when this was prepared?</p> <p>8 A. No, I don't.</p> <p>9 Q. Okay.</p> <p>10 (Exhibit No. 25 was marked as requested.)</p> <p>11 BY MR. SCHIRMER:</p> <p>12 Q. Showing you what has been marked as</p> <p>13 Willardson Exhibit 24 to your deposition, sir.</p> <p>14 THE COURT REPORTER: 25.</p> <p>15 MR. SCHIRMER: 25.</p> <p>16 BY MR. SCHIRMER:</p> <p>17 Q. This is a document that was produced as</p> <p>18 MOARK0016320. Have you ever seen this document</p> <p>19 before, Mr. Willardson?</p> <p>20 A. I don't remember it. Is there a date --</p> <p>21 well, you see some dates on top there.</p> <p>22 Q. Do you know who -- do you have an</p> <p>23 understanding of who might have produced this</p> <p>24 document?</p>	<p style="text-align: right;">Page 117</p> <p>1 A. You could start with Jerry Kil. It probably</p> <p>2 came from Dan Hudgens, who was not with Moark after</p> <p>3 2008.</p> <p>4 Q. Did Mr. Hudgens report to Mr. Kil?</p> <p>5 A. No, he reported to me after I became CEO.</p> <p>6 Q. Prior to that did he report to Mr. Kil?</p> <p>7 A. I believe it was to Mr. Fortin.</p> <p>8 Q. Showing you what is to be marked as</p> <p>9 Exhibit 26 to your deposition.</p> <p>10 (Exhibit No. 26 was marked as requested.)</p> <p>11 BY MR. SCHIRMER:</p> <p>12 Q. This is a document bearing Bates No.</p> <p>13 MOARK00036518 through 519 or 520, and there is an</p> <p>14 attachment to it that was produced as MOARK0036521 on</p> <p>15 the exhibit. I think I even printed it in color.</p> <p>16 It's -- I put a cover page in there for convenience</p> <p>17 of counsel. Once again, it's printed from the</p> <p>18 native.</p> <p>19 What are the first couple pages of this</p> <p>20 document, Mr. Willardson?</p> <p>21 A. Well, it looks like a chain of e-mails the</p> <p>22 last one being from Jerry Kil to me on September 24th</p> <p>23 of '07.</p> <p>24 Q. It says it includes something called UEP</p>

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<p style="text-align: right;">Page 118</p> <p>1 Space Effects 2007.</p> <p>2 A. Mm-hmm.</p> <p>3 MR. SCHIRMER: Excuse me, off the record for</p> <p>4 just a second.</p> <p>5 THE VIDEOGRAPHER: We are going off the</p> <p>6 video record at 1:41 p.m.</p> <p>7 (A short break was taken.)</p> <p>8 THE VIDEOGRAPHER: We are back on video</p> <p>9 record at 1:42 p.m.</p> <p>10 MR. SCHIRMER: After my rude interruption</p> <p>11 from my phone, we're back on the record.</p> <p>12 BY MR. SCHIRMER:</p> <p>13 Q. Do you have an understanding of what the</p> <p>14 document that was produced as MOARK0036521 is?</p> <p>15 A. I haven't seen this document before, but it</p> <p>16 looks like it's another analysis of the impact of the</p> <p>17 phase-in of the UEP Certified Program on the total</p> <p>18 flock.</p> <p>19 Q. Do you know who created this UEP space</p> <p>20 effects document?</p> <p>21 A. It looks like it came from a gentleman named</p> <p>22 David Newman, who is a cage salesman on the East</p> <p>23 Coast.</p> <p>24 Q. What is neagri.com?</p>	<p style="text-align: right;">Page 120</p> <p>1 the flock Moark owned actually was reduced from 2000</p> <p>2 to 2008?</p> <p>3 MS. JACOBSEN: Objection to form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. No.</p> <p>6</p> <p>7 BY MR. SCHIRMER:</p> <p>8 Q. Showing you what has been marked as</p> <p>9 Exhibit 27 to your deposition.</p> <p>10 (Exhibit No. 27 was marked as requested.)</p> <p>11 BY MR. SCHIRMER:</p> <p>12 Q. This is a document labeled MOARK-IPP-027780</p> <p>13 through 27781. What is this document?</p> <p>14 A. Well, it looks like it's a comparison of</p> <p>15 2002 starting flock and 2008 at some point in time</p> <p>16 during the year. Of hens in cage systems, cage free</p> <p>17 aviary.</p> <p>18 Q. Now this would be -- page one at the top,</p> <p>19 who is the e-mail from?</p> <p>20 A. That's from me.</p> <p>21 Q. And when did you send this out?</p> <p>22 A. December 2008.</p> <p>23 Q. Who did you send it to?</p> <p>24 A. Some of the company management.</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Northeast Agri-Builders, is what that stands</p> <p>2 for.</p> <p>3 Q. So they sold cages?</p> <p>4 A. They sold cages.</p> <p>5 Q. You don't remember seeing this?</p> <p>6 A. I don't think I ever saw this document.</p> <p>7 Q. Well, it's at least to you. Maybe you</p> <p>8 didn't read it, but that's okay.</p> <p>9 A. Let me say I don't remember the document.</p> <p>10 Q. Fair enough.</p> <p>11 Now these documents have shown some</p> <p>12 reduction in the number of hens who could be at Moark</p> <p>13 starting in 2002 in the existing facilities, is that</p> <p>14 right? Under the UEP cage space limitations?</p> <p>15 A. This one is actually the national flock</p> <p>16 here.</p> <p>17 Q. Yeah, but the prior documents had shown at</p> <p>18 Moark --</p> <p>19 A. Yes.</p> <p>20 Q. What the effect on Moark would be.</p> <p>21 So starting in 2002 you had an idea of what</p> <p>22 the effect on the existing capacity was?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. And isn't it the case that Moark's flock,</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Who is -- and Andrew is --</p> <p>2 A. He was a consultant. Andrew Hanson did some</p> <p>3 work for us.</p> <p>4 Q. Who's Greg Foster?</p> <p>5 A. Gary Foster is the director of processing</p> <p>6 for the West.</p> <p>7 Q. Don Brown?</p> <p>8 A. He was our production manager in the west.</p> <p>9 Q. Bob Kreider, who was that?</p> <p>10 A. He was -- worked for the hatch company.</p> <p>11 Q. And Jerry Kil was your director of</p> <p>12 operations?</p> <p>13 A. Yes.</p> <p>14 Q. And you say -- you have the subject, FW:</p> <p>15 Change Statistics, and then the document that is</p> <p>16 apparently attached is UEP Change, 2000 to 2008, and</p> <p>17 you write, "Information regarding Moark's production</p> <p>18 in 2000 to 2008. See attached." Is that right?</p> <p>19 A. Yes.</p> <p>20 Q. On the next page, it shows the layers</p> <p>21 represented in the various cage configurations Moark</p> <p>22 has, is that right? These are owned layers only, I</p> <p>23 assume.</p> <p>24 MS. JACOBSEN: Objection, form.</p>

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<p style="text-align: right;">Page 122</p> <p>1 BY MR. SCHIRMER:</p> <p>2 Q. Moark marketed for 26 million about this</p> <p>3 time, didn't it?</p> <p>4 MS. JACOBSEN: Objection to form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. 24 to 26.</p> <p>7 BY MR. SCHIRMER:</p> <p>8 Q. And had around -- I promise -- well, okay.</p> <p>9 A. I don't remember that number.</p> <p>10 Q. This is the layers that Moark owned, isn't</p> <p>11 it? It says here, approximate total layers</p> <p>12 represented above, 2002, 13,323,664; 2008,</p> <p>13 11,146,592. That represents Moark owned layers,</p> <p>14 doesn't it?</p> <p>15 A. It should -- it should, but I'm not familiar</p> <p>16 with these numbers. We actually expanded in 2005 but</p> <p>17 -- in one location alone, a million birds.</p> <p>18 Q. Who is Mr. -- who is Ken Pauze?</p> <p>19 A. Ken Pauze was a manager from the East</p> <p>20 Region.</p> <p>21 Q. And at this time he worked -- he worked for</p> <p>22 you, at least indirectly?</p> <p>23 A. He would have reported through Jerry Kil's</p> <p>24 group.</p>	<p style="text-align: right;">Page 124</p> <p>1 this document, sir?</p> <p>2 A. The front page is a memo from Linda Reickard</p> <p>3 of the UEP from me on February 26, 2004.</p> <p>4 Q. And what is Ms. Reickard writing you about?</p> <p>5 A. She says, Something we might want to address</p> <p>6 before the next annual independent audit is</p> <p>7 conducted, identified house number six. To be at 59</p> <p>8 square inches, you should have no more than 61,016</p> <p>9 birds. It looks like we were over by 224 layers in</p> <p>10 one house, and I'm not sure which house she's</p> <p>11 referring to.</p> <p>12 Q. It says house number six.</p> <p>13 A. We had hundreds and hundreds and hundreds of</p> <p>14 houses across the...</p> <p>15 Q. Okay. I don't -- this is the only document</p> <p>16 that was included in that, so I don't know either.</p> <p>17 You don't recall which house that was?</p> <p>18 A. No, I don't.</p> <p>19 Q. It says that you ae over the 61,016 birds by</p> <p>20 224. If that -- if you were over by 224 and did the</p> <p>21 audit, you would have failed the audit, wouldn't you?</p> <p>22 MS. JACOBSEN: Objection to form.</p> <p>23 BY THE WITNESS:</p> <p>24 A. But that was in a single house. I believe</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. And Mr. Pauze sent this to Gene Gregory,</p> <p>2 this same document?</p> <p>3 A. Yeah, it looks like something Gene</p> <p>4 requested.</p> <p>5 Q. So you think Mr. Pauze was incorrect when he</p> <p>6 did this?</p> <p>7 MS. JACOBSEN: Objection to form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I can't say.</p> <p>10 BY MR. SCHIRMER:</p> <p>11 Q. Now earlier today we talked a little bit</p> <p>12 about there is an auditing process.</p> <p>13 A. Mm-hmm.</p> <p>14 Q. Did Moark ever fail an audit, a UEP audit?</p> <p>15 A. I recall that we had at least one correction</p> <p>16 that we -- where we adjusted, modified it, corrected</p> <p>17 it, and came back and got a pass on it in one</p> <p>18 location.</p> <p>19 Q. Let me show you what has been marked as --</p> <p>20 what's to be marked as Exhibit 28 to your deposition.</p> <p>21 (Exhibit No. 28 was marked as requested.)</p> <p>22 BY MR. SCHIRMER:</p> <p>23 Q. This is a document bearing Bates number</p> <p>24 MOARK00027417 through 425. What's the first page of</p>	<p style="text-align: right;">Page 125</p> <p>1 at the time it was -- it was by complex.</p> <p>2 BY MR. SCHIRMER:</p> <p>3 Q. Wasn't it if one house failed, every place</p> <p>4 failed?</p> <p>5 A. I --</p> <p>6 MS. JACOBSEN: Objection to form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I don't remember. I thought at this point</p> <p>9 in time it was for a complex, rather than an</p> <p>10 individual house.</p> <p>11 BY MR. SCHIRMER:</p> <p>12 Q. You don't remember --</p> <p>13 A. On average. This is a single house, 224</p> <p>14 layers. I don't recall.</p> <p>15 Q. Okay. Do you know if -- if it -- could you</p> <p>16 fail if you were one bird over the amount that you</p> <p>17 were supposed to have?</p> <p>18 MS. JACOBSEN: Objection to form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I don't know.</p> <p>21 BY MR. SCHIRMER:</p> <p>22 Q. 224 is what, half of one percent?</p> <p>23 A. It's a small number. Well, even out of one</p> <p>24 house it's a small number. Out of an entire -- it's</p>

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<p style="text-align: right;">Page 126</p> <p>1 a small number.</p> <p>2 Q. It's less than half of one percent at this</p> <p>3 house?</p> <p>4 A. At that house.</p> <p>5 Q. Do you remember whether you were aware as to</p> <p>6 -- as to whether Moark's salespeople were telling</p> <p>7 customers that one of the factors causing higher egg</p> <p>8 prices was the UEP cage space guidelines?</p> <p>9 MS. JACOBSEN: Objection to form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I am aware of that.</p> <p>12 BY MR. SCHIRMER:</p> <p>13 Q. What are you aware of? You said yes, you</p> <p>14 were aware of that. You were aware that they were</p> <p>15 doing that?</p> <p>16 A. I am aware that that was one of the factors</p> <p>17 that they were discussing with customers during --</p> <p>18 during higher egg markets.</p> <p>19 (Exhibit No. 29 was marked as requested.)</p> <p>20 BY MR. SCHIRMER:</p> <p>21 Q. Showing you what has been marked as</p> <p>22 Exhibit 29 to your deposition, which was also</p> <p>23 Exhibit 29 to Mr. Hodges' deposition. I swear I</p> <p>24 didn't plan that. Is this how you became aware that</p>	<p style="text-align: right;">Page 128</p> <p>1 selling eggs below the cost of production, the</p> <p>2 customers had become very accustomed to those prices,</p> <p>3 and -- and simply asked why is this happening.</p> <p>4 Q. And this was provided to customers?</p> <p>5 A. Yes.</p> <p>6 Q. And you were trying to give customers an</p> <p>7 honest answer?</p> <p>8 A. Trying to be as honest and open as we could</p> <p>9 be.</p> <p>10 Q. Didn't lie to your customers?</p> <p>11 A. Never, never.</p> <p>12 Q. You said you faced a couple bad years prior</p> <p>13 to that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall whether you thought that the</p> <p>16 way to -- ultimately to make sure you would not face</p> <p>17 any more of those such years was supply-side</p> <p>18 management of eggs in production?</p> <p>19 MS. JACOBSEN: Objection to form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I wouldn't call it supply-side management,</p> <p>22 unless I did.</p> <p>23 BY MR. SCHIRMER:</p> <p>24 Q. Showing you what's been marked as</p>
<p style="text-align: right;">Page 127</p> <p>1 some of your salespeople were telling clients --</p> <p>2 A. Yes, mm-hmm.</p> <p>3 Q. And this is -- what is this, sir? It bears</p> <p>4 the Bates No. MOARK0004559 through 4560?</p> <p>5 A. This is an e-mail with attachment that Bob</p> <p>6 Hodges sent to me on January 18, 2007, titled Eggs.</p> <p>7 This is --</p> <p>8 Q. "Here is a response Mark used when Jay asked</p> <p>9 the question." That's what Bob wrote -- what</p> <p>10 Mr. Hodges wrote to you?</p> <p>11 A. Yeah, here is the response Mark used. So</p> <p>12 Jay is one of our -- Jay Flecker, he was our Midwest</p> <p>13 sales director, and in January of 2007, it was -- we</p> <p>14 had a very, very sharp run-up in the market following</p> <p>15 the two worst years in my 24 years in the egg</p> <p>16 industry, so we had customers that wanted to know</p> <p>17 what was going on, a legitimate question, and this</p> <p>18 was something we didn't -- we didn't anticipate this</p> <p>19 as late as December of 2006 that we would be seeing</p> <p>20 the kind of market we did. So this was an attempt,</p> <p>21 as best as we could to be able to say, you know,</p> <p>22 here's why your prices for eggs are higher and why we</p> <p>23 didn't anticipate it. Again, we had just come off a</p> <p>24 terrible period in the egg industry where we were</p>	<p style="text-align: right;">Page 129</p> <p>1 Exhibit 30.</p> <p>2 (Exhibit No. 30 was marked as requested.)</p> <p>3 BY MR. SCHIRMER:</p> <p>4 Q. This is a document bearing Bates label</p> <p>5 MOARK0017717 through 17718.</p> <p>6 Do you know what this document is,</p> <p>7 Mr. Willardson?</p> <p>8 A. Yes. This is an e-mail from me to a former</p> <p>9 Moark employee who was in the retail food and</p> <p>10 business, Eric Ewing is his name.</p> <p>11 Q. When you say he was working in the retail</p> <p>12 food business, what do you mean?</p> <p>13 A. I think he was working for a reporting</p> <p>14 service like IRI.</p> <p>15 Q. And when did you send this e-mail?</p> <p>16 A. I sent it December 3, 2007.</p> <p>17 Q. And you were -- the first line is, "Prices</p> <p>18 are sky high for a few reasons." Is that right?</p> <p>19 A. That's correct. Once again, an attempt to</p> <p>20 explain to somebody, to the best of our</p> <p>21 understanding, why these prices were high.</p> <p>22 Q. And one of the reasons why prices were high</p> <p>23 is that there had been five export orders to Europe</p> <p>24 and Asia during that year. Is that one of</p>

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<p style="text-align: right;">Page 130</p> <p>1 the factors --</p> <p>2 A. That's one of the reasons.</p> <p>3 Q. You said feed prices were higher, so that</p> <p>4 was leading to higher prices?</p> <p>5 A. To the extent we pass those on, yes.</p> <p>6 Q. Then you say, "The drive to expand into new</p> <p>7 cage complexes is limited, therefore, supply it is</p> <p>8 down." I'm not certain I understand that.</p> <p>9 A. The cost to fill in with new -- typical</p> <p>10 expansion that occurs in the industry was down</p> <p>11 because of -- because of just coming off two of the</p> <p>12 worst years anyone had ever seen in the industry,</p> <p>13 lack of capital in the industry, uncertainty about</p> <p>14 where things are after being stung so badly the</p> <p>15 previous period.</p> <p>16 Q. It says, "Animal activists are proposing</p> <p>17 cage bans around the country, including California.</p> <p>18 The drive to expand into new cage complexes is</p> <p>19 limited, therefore supply is down." Are those two</p> <p>20 sentences necessarily linked?</p> <p>21 A. You're right, they are linked. With the</p> <p>22 uncertainty as to are we going to be pushing toward</p> <p>23 -- towards something greater than the 67 square</p> <p>24 inches, as the animal activists wanted, that caused</p>	<p style="text-align: right;">Page 132</p> <p>1 go back to this one we were just looking at?</p> <p>2 Marginal producers cut back. That is a typical</p> <p>3 result of a very hard years when the cost of -- when</p> <p>4 your selling price is actually less than the cost of</p> <p>5 feed.</p> <p>6 Q. What do you mean by marginal producers?</p> <p>7 A. Those that are not efficient, those that are</p> <p>8 running old operations that tend to lose more money.</p> <p>9 They go out of business.</p> <p>10 Q. Would -- would that generally be smaller</p> <p>11 operations?</p> <p>12 A. That would be small to midsize operations.</p> <p>13 Q. Now you were watching on a regular basis the</p> <p>14 inventory of layers, or at least you were given</p> <p>15 information on a regular basis as to the nation's</p> <p>16 inventory of layers, is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Showing you what is being marked as</p> <p>19 Exhibit 31 to your deposition.</p> <p>20 (Exhibit No. 31 was marked as requested.)</p> <p>21 BY MR. SCHIRMER:</p> <p>22 Q. It's a single page document bearing Bates</p> <p>23 number MOARK0036344. It is an e-mail dated -- what</p> <p>24 is it, sir?</p>
<p style="text-align: right;">Page 131</p> <p>1 people to say, let me slow down and see where this is</p> <p>2 all going. So that's what it refers to.</p> <p>3 Q. And it was also becoming more costly --</p> <p>4 MS. JACOBSEN: Let him finish his question.</p> <p>5 MR. SCHIRMER: That's fine. He's fine.</p> <p>6</p> <p>7 BY MR. SCHIRMER:</p> <p>8 Q. And it was getting harder to permit,</p> <p>9 environmental permits were getting harder to get?</p> <p>10 A. In California, yes.</p> <p>11 Q. So you say the industry lost a lot, so</p> <p>12 everyone cut back -- and I'm just summarizing, the</p> <p>13 industry lost a lot so everybody cut back.</p> <p>14 A. Record losses, yeah.</p> <p>15 Q. Then you say, "Supply side management is the</p> <p>16 answer." So what were you saying there?</p> <p>17 A. I'm saying responsible supply management and</p> <p>18 that's -- when I say that, I am thinking as much</p> <p>19 individually as I would be for the industry as a</p> <p>20 whole. Any commodity group, you'll have those that</p> <p>21 want to expand without having markets, notorious for</p> <p>22 doing that. Just being responsible in how we grow</p> <p>23 the business.</p> <p>24 I also note in the second sentence -- can I</p>	<p style="text-align: right;">Page 133</p> <p>1 A. The e-mail is dated Friday, June 22, 2007.</p> <p>2 It's from Gene Gregory to --</p> <p>3 Q. A large list?</p> <p>4 A. A large list.</p> <p>5 Q. Including you?</p> <p>6 A. Including me. Probably members of the UEP</p> <p>7 board.</p> <p>8 Q. And he talks about the layer inventory</p> <p>9 report?</p> <p>10 A. Yes.</p> <p>11 Q. Did Mr. Gregory circulate this type of</p> <p>12 information on a periodic basis to members of the</p> <p>13 board?</p> <p>14 A. Yes.</p> <p>15 Q. And during that time you were a member of</p> <p>16 the board.</p> <p>17 A. Yes.</p> <p>18 MR. SCHIRMER: Why don't we take a</p> <p>19 five-minute break. I may be able to get through the</p> <p>20 rest of this fairly quickly.</p> <p>21 THE VIDEOGRAPHER: We're going off the video</p> <p>22 record at 2:05 p.m.</p> <p>23 (A short break was taken.)</p> <p>24 THE VIDEOGRAPHER: We are back on video</p>

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<p style="text-align: right;">Page 134</p> <p>1 record at 2:14 p.m.</p> <p>2 BY MR. SCHIRMER:</p> <p>3 Q. Something that occurred to me while I was</p> <p>4 thinking about it a little bit, walking out, you were</p> <p>5 on a number of UEP committees over the years?</p> <p>6 A. Yes.</p> <p>7 Q. And the board of directors. Did you attend</p> <p>8 a number of UEP meetings?</p> <p>9 A. During that period, yes.</p> <p>10 Q. Do you recall if you attended most of the</p> <p>11 board of directors meetings?</p> <p>12 A. Yes.</p> <p>13 Q. And when you were a member of the executive</p> <p>14 committee, most of the executive committee meetings?</p> <p>15 A. Yes.</p> <p>16 Q. And when there was a vote, you would vote on</p> <p>17 whatever was in front of the committee?</p> <p>18 A. Yes.</p> <p>19 Q. And when you were on the board, obviously,</p> <p>20 you vote as a member of the board on whatever's</p> <p>21 there?</p> <p>22 A. We did.</p> <p>23 Q. And was it your understanding that a simple</p> <p>24 majority vote on the UEP board would lead to an</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Who is -- in 2007, did Paul Osborn still</p> <p>2 work for Moark?</p> <p>3 A. Actually, Paul Osborn, at that point, had</p> <p>4 gone to work with a company called Golden Oval, to</p> <p>5 whom we sold our egg products business.</p> <p>6 Q. And you sold that in 2006?</p> <p>7 A. 2006. So he was employed by that company.</p> <p>8 (Exhibit No. 32 was marked as requested.)</p> <p>9 BY MR. SCHIRMER:</p> <p>10 Q. Showing you what has been marked as</p> <p>11 Exhibit 32, it's a -- what bears Bates labels</p> <p>12 UE0309830 through 9845 plus an attachment. I can't</p> <p>13 tell, but I think it goes all the way to 948. I may</p> <p>14 have chopped them off when -- chopped off the last</p> <p>15 three numbers when I was stapling them.</p> <p>16 Do you recall ever seeing this before, sir?</p> <p>17 A. I don't recall, but apparently I was at the</p> <p>18 meeting.</p> <p>19 Q. Do you recall attending a meeting in San</p> <p>20 Antonio?</p> <p>21 A. Yes, I do.</p> <p>22 Q. I'd like to you look at the document that</p> <p>23 bears Bates UE0309835 and then 9836. That's on the</p> <p>24 bottom, that's two and three.</p>
<p style="text-align: right;">Page 135</p> <p>1 adoption of whatever motion was before the UEP board?</p> <p>2 A. Not necessarily.</p> <p>3 Q. Under what circumstances would something</p> <p>4 other than a simple majority be required?</p> <p>5 A. I'm referring to simple majority of the</p> <p>6 executive committee. Is that what you're --</p> <p>7 Q. No, I'm referring to the board right now.</p> <p>8 A. To the board, yes, a simple majority.</p> <p>9 Q. What about a simple majority of the</p> <p>10 executive committee?</p> <p>11 A. I guess that would qualify, would pass.</p> <p>12 Q. And were there times when you would attend</p> <p>13 meetings of UEP committee meetings that you were not</p> <p>14 a member of?</p> <p>15 A. Occasionally.</p> <p>16 Q. Do you recall ever attending a UEP marketing</p> <p>17 committee meeting?</p> <p>18 A. I probably did.</p> <p>19 Q. Do you recall whether you got materials at</p> <p>20 that meeting? Were you ever given materials at such</p> <p>21 meetings?</p> <p>22 A. We were given materials at every meeting;</p> <p>23 whether or not I put them in my UEP file and kept</p> <p>24 them, I don't know.</p>	<p style="text-align: right;">Page 137</p> <p>1 A. Mm-hmm.</p> <p>2 Q. It says United States Egg Marketers Members</p> <p>3 January 2007.</p> <p>4 Does -- from what you can see here, is this</p> <p>5 consistent with your recollection as to the</p> <p>6 membership of United States Egg Marketers as of</p> <p>7 January of 2007?</p> <p>8 A. I don't recognize all the names on here, but</p> <p>9 that's not unusual.</p> <p>10 Q. Now it has three, Kofkoff Egg Farm, Moark</p> <p>11 Productions, and Norco Ranch. Were each of these</p> <p>12 companies separately members of USEM?</p> <p>13 A. As carryover companies they were separate</p> <p>14 members. My recollection is we only had -- we only</p> <p>15 had one vote as Moark is a consolidated organization.</p> <p>16 Q. Okay. Look at page -- it has nine at the</p> <p>17 bottom. It says Benefit of USEM Export, January 2007</p> <p>18 Report. Do you recall reviewing this document?</p> <p>19 A. No.</p> <p>20 Q. Do you recall Mr. Gregory ever stating that</p> <p>21 there was an estimated revenue gain of 660,000 per</p> <p>22 million hens over a ten-week period based upon</p> <p>23 exports?</p> <p>24 A. This was seven years ago. I don't recall</p>

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<p style="text-align: right;">Page 138</p> <p>1 the specifics.</p> <p>2 Q. Do you recall him ever estimating the</p> <p>3 revenue gain?</p> <p>4 A. Yes.</p> <p>5 Q. Per million hens?</p> <p>6 A. Yes.</p> <p>7 Q. Did you ever talk to Mr. Gregory about those</p> <p>8 estimates?</p> <p>9 A. No. They were Gene's estimates and somebody</p> <p>10 with an accounting background such as myself, I just</p> <p>11 took them as estimates.</p> <p>12 Q. I won't ask.</p> <p>13 I'm going to show you a document and two</p> <p>14 attachments marked as Exhibit 33.</p> <p>15 (Exhibit No. 33 was marked as requested.)</p> <p>16 BY MR. SCHIRMER:</p> <p>17 Q. The first two documents are e-mails and then</p> <p>18 there is an attachment. There is an e-mail from</p> <p>19 Austin Smith at AGIO, which I assume is Goldsmith</p> <p>20 AGIO Helms, to you, Don Dent, Bob Hodges, and</p> <p>21 Mr. Hudgens, Dan Hudgens, is that right?</p> <p>22 A. That's right.</p> <p>23 Q. And apparently attached is what's called the</p> <p>24 final draft of the management presentation for the</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. And that's because as of June 2006 you had a</p> <p>2 pending sale of your egg product business to Golden</p> <p>3 Oval, is that right?</p> <p>4 A. We did, but this report is for the shell egg</p> <p>5 business, not the egg products.</p> <p>6 Q. The Lakers were somebody who was thinking of</p> <p>7 buying Moark and at that point, all you had to sell</p> <p>8 was the shell egg business?</p> <p>9 A. Correct.</p> <p>10 Q. On page five of this document, this document</p> <p>11 has got pages down here in the lower right-hand</p> <p>12 corner, I think. You can change it, you can unhinge</p> <p>13 it. I did that because it was easier me.</p> <p>14 On page five, I guess it's in tan, I was</p> <p>15 told by Mr. Hodges, it lists the management team, and</p> <p>16 the first is Craig Willardson, president, chief</p> <p>17 executive officer. That's correct as of that -- as</p> <p>18 of the summer of 2006?</p> <p>19 A. Yes.</p> <p>20 Q. And it says you had 22 years of relevant</p> <p>21 experience. Is that experience in the eggs business</p> <p>22 at that point?</p> <p>23 A. Would have been a combination of the egg</p> <p>24 business and the food business, including my</p>
<p style="text-align: right;">Page 139</p> <p>1 Lakers Group. What was the Lakers Group?</p> <p>2 A. It was an investment group that was a</p> <p>3 potential buyer for Moark in 2006, not to be confused</p> <p>4 with the L.A. Lakers, as some people did in this</p> <p>5 organization.</p> <p>6 Q. I thought it might be somebody from Land O'</p> <p>7 Lakes.</p> <p>8 And Goldsmith AGIO Helms, was that a -- who</p> <p>9 were they?</p> <p>10 A. They were a mid-market investment advisor.</p> <p>11 This group was based Minneapolis.</p> <p>12 Q. And Goldsmith AGIO Helms advised Moark on</p> <p>13 the sale of its eggs products division to Golden</p> <p>14 Oval, didn't they?</p> <p>15 A. They did.</p> <p>16 Q. Was this management presentation given to</p> <p>17 that group of investors?</p> <p>18 A. Yes, it was.</p> <p>19 Q. Let's have a look at this. This bears Bates</p> <p>20 number MOARK0034675 through 676, and a larger</p> <p>21 document produced as MOARK0034677, and the front page</p> <p>22 of it is Overview Of The Shell Egg Business is that</p> <p>23 right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 experience at Denny's.</p> <p>2 Q. But not necessarily your time at Arthur</p> <p>3 Young?</p> <p>4 A. Not the time at Arthur Young.</p> <p>5 Q. Did you go straight from Arthur Young to</p> <p>6 Denny's?</p> <p>7 A. Yes, I did.</p> <p>8 Q. What was your job at Denny's?</p> <p>9 A. I had various positions. I was the manager</p> <p>10 of financial reporting, director of financial</p> <p>11 planning, and then controller for one of the</p> <p>12 divisions.</p> <p>13 Q. Now if you look at number five, it says</p> <p>14 pending sale of the eggs products business. That was</p> <p>15 the sale of the eggs products business to Golden</p> <p>16 Oval?</p> <p>17 A. Yes.</p> <p>18 Q. So the next page, it states that -- there's</p> <p>19 a series of bullet points. Overview, Moark presents</p> <p>20 a unique coast-to-coast branding opportunity. Do you</p> <p>21 see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And Moark was, through Goldsmith AGIO Helms,</p> <p>24 presenting this presentation, either in conjunction</p>

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<p style="text-align: right;">Page 142</p> <p>1 or through Goldsmith, to potential investors?</p> <p>2 A. Yes.</p> <p>3 Q. It says you had a national footprint. What</p> <p>4 did you mean by that?</p> <p>5 A. We extended from Southern California to the</p> <p>6 Northeast with various points in between.</p> <p>7 Q. So you could sell essentially all over the</p> <p>8 United States?</p> <p>9 A. We could sell a substantial portion of the</p> <p>10 country.</p> <p>11 Q. Did you sell in Hawaii in those cases?</p> <p>12 A. We did sell in Hawaii, but not Washington,</p> <p>13 Oregon, Alaska. Other northern states.</p> <p>14 Q. Bummer.</p> <p>15 A. And yes, I did go to Hawaii a few times.</p> <p>16 Q. Okay, you beat me to that question.</p> <p>17 On page seven, it says, "Goals and</p> <p>18 priorities for Moark's management, transform Moark to</p> <p>19 a national integrated operating company." What does</p> <p>20 that mean?</p> <p>21 A. That meant we had historically been a</p> <p>22 collection that had grown through acquisition. We</p> <p>23 had ten acquisitions over a three-year period and</p> <p>24 there were still a lot of independent operations. It</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. On the second major bullet point it says,</p> <p>2 "Evolving industry dynamics will contribute to</p> <p>3 consolidation." There's -- the one, two, three,</p> <p>4 four, five down the line it says, "Access to markets</p> <p>5 and producer mentality." Do you have an</p> <p>6 understanding of what that means? What that meant at</p> <p>7 the time?</p> <p>8 A. Well, I understand access to markets</p> <p>9 producer mentality. I don't know what was intended</p> <p>10 by that. I can't recall what was intended by that</p> <p>11 comment.</p> <p>12 Q. Now if you turn to the next page it lists</p> <p>13 the top ten egg marketing companies. Do you see</p> <p>14 that? And it lists Moark as second. Now it says</p> <p>15 number in the table here on page ten, it says company</p> <p>16 and then there's number of layers marketed and number</p> <p>17 of layers owned. What's the difference between</p> <p>18 layers marketed and layers owned?</p> <p>19 A. Layers marketed would have been an estimate</p> <p>20 for the total sales of the company.</p> <p>21 Q. And layers owned is the actual number of</p> <p>22 layers the company reported owning?</p> <p>23 A. Yes, and if you look down below you see Fort</p> <p>24 Recover Equity. That was our joint venture</p>
<p style="text-align: right;">Page 143</p> <p>1 was my goal and our goal to make sure we were</p> <p>2 consolidated, uniform, thinking alike across the</p> <p>3 country. Just more efficient.</p> <p>4 Q. Which reminds me, do you have an</p> <p>5 understanding as to whether Moark has sold off any of</p> <p>6 its businesses in the last month or so?</p> <p>7 A. I do.</p> <p>8 Q. What is your understanding? There's an</p> <p>9 announcement on May 23rd.</p> <p>10 A. Yes, it sold its Midwest Division to a group</p> <p>11 of egg producers and a private equity investor and</p> <p>12 sold its California operations to a co-op in</p> <p>13 California.</p> <p>14 Q. In this presentation to the Lakers Group,</p> <p>15 there's -- on page nine, would you please turn to</p> <p>16 that? Now the information given here on page nine is</p> <p>17 -- includes market information, and that's -- is that</p> <p>18 the best understanding of the market as Moark</p> <p>19 understood it at the time?</p> <p>20 MS. JACOBSEN: Objection to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. That would have been our best understanding</p> <p>23 at that time.</p> <p>24 BY MR. SCHIRMER:</p>	<p style="text-align: right;">Page 145</p> <p>1 operation.</p> <p>2 Q. In Ohio?</p> <p>3 A. In Ohio, yep.</p> <p>4 Q. And it said you owned 50 percent of the</p> <p>5 gains and losses from the birds there, and controlled</p> <p>6 the marketing efforts through a joint venture.</p> <p>7 A. Yes.</p> <p>8 Q. Yeah. So that was -- all this is accurate</p> <p>9 to the best of Moark's ability at the time?</p> <p>10 A. At the time, yes. Estimates in terms of</p> <p>11 layers marketed, because that's a -- that's one of</p> <p>12 those numbers.</p> <p>13 Q. But Moark would know how many layers it</p> <p>14 marketed?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Please turn to the next page. The</p> <p>17 first bullet point is Shell Egg Demand Factors,</p> <p>18 Population Growth. First sentence is, "As with most</p> <p>19 commodities, sales are positively correlated with</p> <p>20 population growth." What does at that mean?</p> <p>21 A. That means that there's going to be a</p> <p>22 continued, say, one percent consumption growth to</p> <p>23 track the population. Eggs have a 98 percent</p> <p>24 household penetration, therefore, we all eat eggs, as</p>

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<p style="text-align: right;">Page 146</p> <p>1 the population grows, we expect there to be a 2 correlation with consumption. 3 Q. Was the egg -- per capita egg consumption 4 relatively stable over the period, say, 2002 to 2010? 5 A. It was relatively stable. 6 Q. You also list egg supply has surpassed 7 demand causing shell egg prices to fall. Do you see 8 that on the left-hand side? 9 A. Oh, yes. 10 Q. It says there are certain shell egg supply 11 factors on major bullet point number two, I guess. 12 It says, once again, it's similar to what you talked 13 about earlier, feed cost, lower feed prices encourage 14 increased supply, low egg prices eventually force 15 inefficient producers with older facilities out of 16 the market. We've already discussed that, right? 17 A. Right. 18 Q. You said new modern facilities are more 19 expensive, sophisticated and time-consuming to build. 20 Was that accurate as of June 2006? 21 A. Yes, it was. 22 Q. And it says the UEP Animal Care 23 Certification Program increases the amount of space 24 needed per bird per cage, is that correct?</p>	<p style="text-align: right;">Page 148</p> <p>1 higher cost, higher priced regions where -- if they 2 thought they could get a better return for their -- 3 for their product. 4 Q. And customers were purchasing from people in 5 the Midwest if they were up in the Northeast because 6 they could provide lower costs? 7 A. Lower cost, or at least a competing cost. 8 They would -- they wouldn't purchase directly from 9 the egg -- the suppliers in the Midwest. For the 10 most part, they would go through one of us as 11 distributors. 12 Q. Did you purchase eggs -- did Moark, during 13 the period of time you were at Moark, purchase eggs 14 from other egg producers? 15 A. We did. 16 Q. Who were some of the egg producers you 17 purchased from? 18 A. Purchased from Wright County Eggs of Iowa, 19 Center Fresh Farms, Centrum Farms. We had regular 20 supply and we had -- 21 Q. Did you ever -- did you have a business 22 arrangement with Cal Maine pursuant to which you 23 would purchase surplus eggs produced at the Delta Egg 24 Farm?</p>
<p style="text-align: right;">Page 147</p> <p>1 A. That's correct, as well as diseases. 2 Q. And diseases -- 3 A. Because we actually experienced that 4 firsthand. 5 Q. And in 2010, you also had a recall, didn't 6 you? 7 A. Yes. 8 Q. And you were able to recall the eggs that 9 from -- was it Iowa? 10 A. Iowa, yes. 11 Q. Would you turn to the next page it? Talks 12 about shell egg prices are often determined by the 13 Urner-Barry market. This is what we were talking 14 about -- is this referring to what we discussed 15 earlier with respect to most commodity eggs are based 16 upon the Urner-Barry quotations? 17 A. Yes. 18 Q. The third bullet point says egg producers 19 from lower cost regions are moving into high cost, 20 high price regions. What phenomenon are you 21 referring to there, sir? 22 A. In other words, those that are located in 23 the Corn Belt such as Iowa, Midwest, would export 24 their eggs into the Northeast or California where --</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Yes. Yes, we bought eggs from Delta Egg 2 Farm, but it was our own joint venture, so I don't 3 consider that an outside -- outside producer. 4 Q. Okay. Did you ever purchase any other eggs 5 from Cal Maine? 6 A. I don't recall. 7 Q. Did you ever attend a management meeting at 8 Cal Maine? 9 A. Yes. 10 Q. When did you do that, sir? 11 A. I attended that in 2006. 12 Q. What was the -- what occasioned you to 13 attend a Cal Maine management meeting? 14 A. It was an invitation from them to say, 15 Welcome to our joint venture, partner, who was new in 16 his position as CEO, and we'd like to have you spend 17 some time with us. 18 Q. How long were you there? 19 A. I was there for a little over a day. 20 Q. Do you remember what type of issues were 21 discussed while you were at that management meeting? 22 A. They reported on the -- their individual 23 plants and how they performed. It was mostly an 24 operational review. I don't recall if there was --</p>

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<p style="text-align: right;">Page 150</p> <p>1 other industry topics or anything else.</p> <p>2 Q. Do you recall whether you were given a big</p> <p>3 book of materials?</p> <p>4 A. I was.</p> <p>5 Q. And do you recall the materials -- you said</p> <p>6 it was basically an operational review. Did that</p> <p>7 include things like their cost of production?</p> <p>8 MR. SCHIRMER: Hello? Did somebody just</p> <p>9 join? Somebody must have left. Don't worry, it's</p> <p>10 me. I'm boring them.</p> <p>11 BY MR. SCHIRMER:</p> <p>12 Q. Did that include -- did the information</p> <p>13 include things like their cost of production?</p> <p>14 A. Yes, it did.</p> <p>15 Q. Would you have a look at product overview?</p> <p>16 That's on -- it starts on page 15, but there is a</p> <p>17 cover page that says product overview. It shows</p> <p>18 Ralph's Grocery Company category review. What is</p> <p>19 this?</p> <p>20 A. This is a typical store set we would call it</p> <p>21 for Ralph's, which is a division of the Kroger</p> <p>22 Companies in Southern California, so to the potential</p> <p>23 buyers of the organization, we wanted to demonstrate</p> <p>24 how many different brands we sold and give them a</p>	<p style="text-align: right;">Page 152</p> <p>1 growing 14 percent annually. Is that consistent with</p> <p>2 your recollection of the market about that time?</p> <p>3 A. Yes.</p> <p>4 Q. This third point is the profit margins are 5</p> <p>5 to 15 times higher than commodity shell eggs. Was</p> <p>6 that for Moark at the time?</p> <p>7 A. This contains some -- some marketing promo,</p> <p>8 was put together by our investor/broker. I can't say</p> <p>9 if that was consistent, accurate. That's kind of a</p> <p>10 wide range, 5 to 15.</p> <p>11 Q. Okay. But you had an opportunity to review</p> <p>12 this before it went out?</p> <p>13 A. Yeah, we did, and during this year --</p> <p>14 remember, this was during the poorest commodity</p> <p>15 prices in history.</p> <p>16 Q. If you're making negative, I hope it's not</p> <p>17 15 times worse than the negative losing.</p> <p>18 A. You had to be there.</p> <p>19 Q. All right. It says prices are fixed, not</p> <p>20 impacted by Urner-Barry. Is that because they're</p> <p>21 cost plus contracts?</p> <p>22 A. Yeah, they're cost plus or flat price.</p> <p>23 Yeah.</p> <p>24 Q. Now would the -- it says they command a</p>
<p style="text-align: right;">Page 151</p> <p>1 feel for -- for what our market make up was like.</p> <p>2 Q. And it shows generic eggs being 93 percent</p> <p>3 of the total volume. That's dozens? What does that</p> <p>4 mean?</p> <p>5 A. That means that commodity eggs made up</p> <p>6 93 percent in 2005.</p> <p>7 Q. Of Moark's sales?</p> <p>8 A. Of Moark's total sales, right.</p> <p>9 Q. And branded eggs, that would be Land O'</p> <p>10 Lakes, basically?</p> <p>11 A. Land O' Lakes, Eggland's Best were the two</p> <p>12 big brands.</p> <p>13 Q. Specialty eggs would include all the</p> <p>14 specialty eggs we discussed earlier today?</p> <p>15 A. Organic, cage free, omega-3.</p> <p>16 Q. Some of which were marketed under the Land</p> <p>17 O' Lakes brand? Or would Land O' Lakes be considered</p> <p>18 branded --</p> <p>19 A. No, it would be considered branded. So</p> <p>20 those were considered in the branded category,</p> <p>21 specialty were all other non-branded.</p> <p>22 Q. The next page talks about national branded</p> <p>23 and specialty eggs. The first point is the U.S. --</p> <p>24 the second bullet point on that is the market is</p>	<p style="text-align: right;">Page 153</p> <p>1 price premium at retail of 100 to 300 percent. Do</p> <p>2 you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Was that accurate?</p> <p>5 A. For the retailers, yes, that was accurate.</p> <p>6 That doesn't refer to the wholesale price.</p> <p>7 Q. I understand.</p> <p>8 A. But for the retailers, yes.</p> <p>9 Q. And -- and do you have an understanding as</p> <p>10 to why specialty eggs could command a premium over</p> <p>11 commodity eggs at the retail?</p> <p>12 A. It's a smaller niche. It's a different kind</p> <p>13 of a buyer that wants a specialty egg, that's willing</p> <p>14 to pay up for it. Obviously there's more cost in</p> <p>15 producing a specialty egg, and just fewer of them,</p> <p>16 therefore, higher prices.</p> <p>17 Q. You said something, a different kind of</p> <p>18 buyer willing to pay more for them. So people who</p> <p>19 are looking for organic eggs are people who would in</p> <p>20 the store and look for them?</p> <p>21 A. Yes, like a typical Whole Foods type shopper</p> <p>22 that wants that kind of an egg.</p> <p>23 Q. Okay. Would you please turn to page 23? In</p> <p>24 the corner it says top tier customer base.</p>

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<p style="text-align: right;">Page 154</p> <p>1 A. Mm-hmm.</p> <p>2 Q. I assume that that was an accurate marketing</p> <p>3 description of what you thought your customer base</p> <p>4 was?</p> <p>5 A. Yes.</p> <p>6 Q. And it has one, two, three, four categories.</p> <p>7 The first is traditional retail. That -- what does</p> <p>8 that mean?</p> <p>9 A. That means large chain grocery stores that</p> <p>10 you're familiar with. Albertson's, Kroger.</p> <p>11 Q. And they represented 34 percent of Moark's</p> <p>12 sales in terms of dozens of eggs?</p> <p>13 A. In terms of volume, yes.</p> <p>14 Q. And mass merchandisers, that's -- it looks</p> <p>15 like it's just Walmart?</p> <p>16 A. Walmart.</p> <p>17 Q. Now who's Country Creek?</p> <p>18 A. Country Creek was the intermediary broker</p> <p>19 that handled the Walmart business for much of the egg</p> <p>20 community, not all of it. So we would sell through</p> <p>21 Country Creek to Walmart.</p> <p>22 Q. The next one down is Cal Maine and Walmart.</p> <p>23 What does that refer to?</p> <p>24 A. That would have been the eggs that were sold</p>	<p style="text-align: right;">Page 156</p> <p>1 other include?</p> <p>2 A. Those would be smaller customers, for</p> <p>3 example, a Trader Joe's, if you're familiar with them</p> <p>4 at all, or any other independent restaurant chain</p> <p>5 that didn't make the top ten.</p> <p>6 Q. You said you didn't supply Washington and</p> <p>7 Oregon. How come?</p> <p>8 A. It's not easy to transport eggs from where</p> <p>9 we had -- if you look at Southern California, there</p> <p>10 is a high cost of transportation for a finished</p> <p>11 product to the retailer and for -- we still handled</p> <p>12 direct store delivery in many cases, which is how we</p> <p>13 distinguished ourselves from the rest of the</p> <p>14 industry. It just didn't make sense. Too far.</p> <p>15 Q. Now would you turn to page 33 for a minute?</p> <p>16 It says at the top Production and Processing Vertical</p> <p>17 Integration. What is your understanding of what it</p> <p>18 meant here when it says Moark is a vertically</p> <p>19 integrated producer, processor, and marketer of shell</p> <p>20 eggs?</p> <p>21 A. Moark was a company that controlled and</p> <p>22 oversaw and owned most of the processes to -- from</p> <p>23 egg production through the -- the end retailer. We</p> <p>24 had that direct responsibility.</p>
<p style="text-align: right;">Page 155</p> <p>1 from our Delta Utah joint venture to Cal Maine for</p> <p>2 Walmart. For Walmart located there in Utah that</p> <p>3 belonged to the independent, standalone joint</p> <p>4 venture.</p> <p>5 Q. All right.</p> <p>6 A. So we bought eggs from -- to supply</p> <p>7 Albertson's, for example; they bought eggs to supply</p> <p>8 their Walmart store that they served.</p> <p>9 Q. Then there is a set of club stores. That's</p> <p>10 Costco, BJ's, Sam's Club, that's just what it sounds</p> <p>11 like?</p> <p>12 A. Just what it is.</p> <p>13 Q. Okay. That was about 13 percent of your</p> <p>14 business at that time?</p> <p>15 A. Yes.</p> <p>16 Q. And Eggs America, that's -- it says food</p> <p>17 service Eggs America, Sysco U.S. Food Service?</p> <p>18 A. Strictly food service.</p> <p>19 Q. And that was -- those top ten were about 73</p> <p>20 -- well, it says 73.9, about 74 percent of Moark's</p> <p>21 sales in 2005?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. Now it says all other traditional retail and</p> <p>24 other. What would all other traditional retail and</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. Did you have a -- did you have trucks?</p> <p>2 A. We had trucks, yes.</p> <p>3 Q. You owned your own pullets?</p> <p>4 A. We owned the pullets. We did not hatch in</p> <p>5 the company, so we did not hatch the chicks.</p> <p>6 Q. And you did your own egg grading?</p> <p>7 A. Did our own egg grading, did our own feed</p> <p>8 milling.</p> <p>9 Q. Do you recall what percentage of Moark's</p> <p>10 construction in 2006 was inline processing? First,</p> <p>11 what is inline processing?</p> <p>12 A. I'll bet you know. Inline is when the</p> <p>13 production goes right from the henhouse through those</p> <p>14 conveyer belts into the processing plant and they</p> <p>15 like to say that they're washed, cleaned, packed</p> <p>16 without even ever even touching human hands.</p> <p>17 Q. And how many people would it take to oversee</p> <p>18 a chicken house on a day-to-day basis?</p> <p>19 A. If it's a very -- if it's an automated</p> <p>20 state-of-the-art house, you could -- you would have,</p> <p>21 in the house alone, one person per chicken house, not</p> <p>22 counting the plant.</p> <p>23 Q. Mm-hmm.</p> <p>24 A. You asked about chicken house.</p>

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<p style="text-align: right;">Page 158</p> <p>1 Q. Yeah, that's all I asked.</p> <p>2 A. Yeah.</p> <p>3 Q. One person per house?</p> <p>4 A. Older facilities we would have as many as</p> <p>5 four or five if they weren't fully automated.</p> <p>6 Q. How many facilities did Moark have in --</p> <p>7 between 2002 and 2008 that were not fully automated?</p> <p>8 A. I would estimate about five.</p> <p>9 Q. Out of how many?</p> <p>10 A. Out of 15 to 20.</p> <p>11 Q. What is a direct warehouse program?</p> <p>12 A. Where are you reading that?</p> <p>13 Q. I'm reading it on page 35, but I've seen it</p> <p>14 in a number of places. I just don't understand the</p> <p>15 term.</p> <p>16 A. It's where we serve a large regional chain,</p> <p>17 such as a Kroger or Albertson's, where we can take</p> <p>18 all the product ready stage into a warehouse and drop</p> <p>19 it there instead of going store by store.</p> <p>20 Q. Please turn to page 38. It says, "Moark</p> <p>21 purchases approximately 50 percent of the shell eggs</p> <p>22 we market from third party suppliers." Was that an</p> <p>23 accurate statement at that time?</p> <p>24 A. It was an estimate.</p>	<p style="text-align: right;">Page 160</p> <p>1 ventures here, Sun Best, Moark Fort Recovery, Delta.</p> <p>2 So in other words, these are the not-directly-owned</p> <p>3 facilities.</p> <p>4 Q. Let's talk about that for just a minute.</p> <p>5 Delta was a joint venture, we already talked about</p> <p>6 that. Moark Fort Recovery was a joint venture. Sun</p> <p>7 Best was a joint venture?</p> <p>8 A. See, this is 2006. Sun Best was actually a</p> <p>9 contract purchase. We -- when we buy Sun Best Foods,</p> <p>10 that included -- that included the Delta Egg joint</p> <p>11 venture and then the right to purchase from a</p> <p>12 third-party owned facility.</p> <p>13 Q. Did you buy -- what do you mean? You said</p> <p>14 when we buy Sun Best Foods. Did Moark at some point</p> <p>15 buy Sun Best Foods?</p> <p>16 A. Moark bought a company called Sun Best</p> <p>17 Foods, I believe around 2002, that included a</p> <p>18 facility in Clearfield -- Clearfield, Iowa. The</p> <p>19 facility -- the joint partnership in Delta, Utah, and</p> <p>20 the right to purchase from another producer in -- who</p> <p>21 retained his facility called Sun Best Farm, also in</p> <p>22 Southwest Iowa.</p> <p>23 Q. What's Wright County Eggs?</p> <p>24 A. Wright County Eggs is a large producer in</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Where it says usually -- it says supply</p> <p>2 arrangements, predetermined purchase quantities.</p> <p>3 What does that mean?</p> <p>4 A. That would probably -- that would refer to</p> <p>5 where we have a committed contract with a producer</p> <p>6 where we will take all their eggs and we understand</p> <p>7 what their -- roughly what they're producing.</p> <p>8 Q. Now the next bullet point under shell eggs</p> <p>9 is production contracts. Moark owns layers housed at</p> <p>10 suppliers' facilities, and supplier receives a</p> <p>11 per-dozen fee to tend to the flock, but Moark retains</p> <p>12 rights to all the eggs. Was -- how did the</p> <p>13 production contracts work beyond what I'm seeing</p> <p>14 here? Did Moark provide for the feed?</p> <p>15 A. Moark provided the feed, Moark would provide</p> <p>16 the hens, would usually raise the pullets. So these</p> <p>17 were represented mostly by specialty egg producers,</p> <p>18 cage free, organic, small family farmers.</p> <p>19 Q. Okay. Turn to page 40 for just a minute.</p> <p>20 It lists suppliers. It lists Delta as a supplier of</p> <p>21 shell eggs. I thought earlier you didn't really --</p> <p>22 you said you didn't really view them has a separate</p> <p>23 supplier of shell eggs. Maybe I'm mistaken.</p> <p>24 A. Well, we list -- we list all of our joint</p>	<p style="text-align: right;">Page 161</p> <p>1 the Midwest, in Iowa principally.</p> <p>2 Q. Rocky Mountain Eggs was -- where were they</p> <p>3 located?</p> <p>4 A. They were located Colorado. They're an</p> <p>5 integrated producer/marketer.</p> <p>6 Q. Did you buy -- were these purchases of</p> <p>7 commodity eggs from Rocky Mountain Foods?</p> <p>8 A. It would be a combination of both, commodity</p> <p>9 and -- and that would have come into what we called</p> <p>10 our Boulder Valley facility in Colorado.</p> <p>11 Q. Did you purchase nest run eggs from Rocky</p> <p>12 Mountain Eggs?</p> <p>13 A. I don't know. I don't recall.</p> <p>14 Q. Please take a look at page 47, Margin</p> <p>15 Improvement Opportunities. There is a bullet point</p> <p>16 called flock size management molts and kills. To</p> <p>17 what does that refer, sir?</p> <p>18 A. That refers to what we described earlier</p> <p>19 about -- about if we become more efficient at</p> <p>20 managing how we molt our birds, how we dispose of</p> <p>21 them, that there's a gain there. I mean, that's for</p> <p>22 any operator in the egg business. That's something</p> <p>23 you want to focus on.</p> <p>24 Q. I take it you didn't sell the business from</p>

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<p style="text-align: right;">Page 162</p> <p>1 this?</p> <p>2 A. We didn't.</p> <p>3 Q. Okay.</p> <p>4 A. In spite of this great document.</p> <p>5 Q. At a certain point, you said that there --</p> <p>6 that you were involved in a presentation, or at least</p> <p>7 you knew a presentation was made at the Pacific Egg</p> <p>8 Producers Association?</p> <p>9 A. Yes.</p> <p>10 (Exhibit No. 34 was marked as requested.)</p> <p>11 MR. SCHIRMER: This is a document labeled</p> <p>12 MOARK005746.</p> <p>13 BY MR. SCHIRMER:</p> <p>14 Q. I'll ask about that in just a minute. Do</p> <p>15 you recall what this document is, sir? It's</p> <p>16 highlighted for you.</p> <p>17 A. Yeah, this is correspondence between Gene</p> <p>18 Gregory and me about his presentation at the PEPA.</p> <p>19 Q. And showing you what is going to be marked</p> <p>20 as 35.</p> <p>21 (Exhibit No. 35 was marked as requested.)</p> <p>22 BY MR. SCHIRMER:</p> <p>23 Q. No. 35 bears Bates Nos. MOARK-IPP-0029192</p> <p>24 through 293 and Moark -- and a larger document</p>	<p style="text-align: right;">Page 164</p> <p>1 -- that is a copy of your long range growth plan?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And was this -- it -- the reason I ask that</p> <p>4 now, I'll come back to this, but you said that this</p> <p>5 information might have been used in the long range</p> <p>6 growth plan, and that led me to think about this.</p> <p>7 Back to Exhibit 35, the portion of it</p> <p>8 labeled PEPA annual convention. I'm sorry these</p> <p>9 don't have page numbers on them. Once again, this is</p> <p>10 Mr. Gregory's view of what -- the second page says</p> <p>11 Factors That Attributed to 2007 Egg Prices.</p> <p>12 A. Yes.</p> <p>13 Q. And this is Mr. Gregory's view of what</p> <p>14 attributed -- some of the factors that led to the egg</p> <p>15 prices of 2007, is that right?</p> <p>16 A. Mm-hmm.</p> <p>17 Q. First one, he says financial losses of 2005</p> <p>18 and 2006, right?</p> <p>19 A. (Nonverbal response.)</p> <p>20 Q. Flock production, better supply management.</p> <p>21 Do you have an understanding what Mr. Gregory was</p> <p>22 talking about there?</p> <p>23 MR. DAVIS: Objection to form.</p> <p>24 BY THE WITNESS:</p>
<p style="text-align: right;">Page 163</p> <p>1 produced as MOARK0029196. What is this?</p> <p>2 A. The larger document here?</p> <p>3 Q. Yeah, the larger document.</p> <p>4 A. This is the presentation made by Gene</p> <p>5 Gregory at the PEPA meeting in 2008.</p> <p>6 Q. And in the first page you were forwarding</p> <p>7 that to -- you had forwarded that to Mr. Dent and</p> <p>8 Mr. Gentry?</p> <p>9 A. Yes.</p> <p>10 Q. Why did you forward it to Mr. Dent and</p> <p>11 Mr. Gentry?</p> <p>12 A. Just general industry information that might</p> <p>13 have been helpful for our long-range plan.</p> <p>14 Q. Why don't we mark this right now.</p> <p>15 (Exhibit No. 36 was marked as requested.)</p> <p>16 BY MR. SCHIRMER:</p> <p>17 Q. Showing you what has been marked as</p> <p>18 Exhibit 36, Bates No. MOARK0038005, and then a larger</p> <p>19 document produced as MOARK0038006.</p> <p>20 What is the first page of Exhibit 36, sir?</p> <p>21 A. Looks like it's an e-mail from Matt Gentry</p> <p>22 to Don Dent, Kim Wirka, and me dated March 7, 2008,</p> <p>23 referring to the Moark growth LRP plan.</p> <p>24 Q. And what was attached here, is that a copy</p>	<p style="text-align: right;">Page 165</p> <p>1 A. He's was simply referring to the fact that</p> <p>2 there were less birds in lay in 2007 than there were</p> <p>3 in 2006 and 5.</p> <p>4 BY MR. SCHIRMER:</p> <p>5 Q. He then lists the bullet point UEP certified</p> <p>6 cage space requirements. What is your understanding</p> <p>7 of what that bullet point was -- and the presentation</p> <p>8 --</p> <p>9 MR. DAVIS: Objection, calls for</p> <p>10 speculation.</p> <p>11 MR. SCHIRMER: Are you telling me he</p> <p>12 speculates as to what his understanding of something</p> <p>13 is? Really?</p> <p>14 BY MR. SCHIRMER:</p> <p>15 Q. What is your understanding of what -- what</p> <p>16 was your understanding of what Mr. Gregory was trying</p> <p>17 to convey when he said UEP certified cage space</p> <p>18 requirements?</p> <p>19 MS. JACOBSEN: Objection to form.</p> <p>20 BY MR. SCHIRMER:</p> <p>21 Q. You can answer.</p> <p>22 MR. DAVIS: Objection, calls for</p> <p>23 speculation.</p> <p>24 MS. JACOBSEN: You can answer. Yeah, You</p>

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<p style="text-align: right;">Page 166</p> <p>1 can go ahead.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Not knowing exactly what Gene was thinking,</p> <p>4 he was probably referring to the -- the 2006 third</p> <p>5 stage implementation of the EVP space requirements.</p> <p>6 BY MR. SCHIRMER:</p> <p>7 Q. That would reduce the number of chickens</p> <p>8 that could be held in each cage?</p> <p>9 A. Yes.</p> <p>10 MS. JACOBSEN: Objection to form.</p> <p>11 BY MR. SCHIRMER:</p> <p>12 Q. The next one is prohibited backfilling of</p> <p>13 cages. Do you remember what that referred to -- what</p> <p>14 the discussion was surrounding the prohibited</p> <p>15 backfilling of cages at the time?</p> <p>16 A. That was a new -- a new requirement of the</p> <p>17 -- I say new. I do not know what year this went in,</p> <p>18 backfilling of cages for the UEP cage requirements</p> <p>19 animal care standards.</p> <p>20 Q. Let's turn to the seventh page where it says</p> <p>21 backfilling cages. Under backfilling cages it says</p> <p>22 from -- the first bullet point is, "From the summer</p> <p>23 of 2003 through the spring of 2004, the industry</p> <p>24 enjoyed very profitable prices." Is that consistent</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. Do you recall whether -- Mr. Gregory giving</p> <p>2 this as a presentation at the PEPA convention?</p> <p>3 A. I do.</p> <p>4 Q. Do you recall whether you disagreed with him</p> <p>5 at that time?</p> <p>6 A. I didn't have any confidence in these</p> <p>7 numbers because I didn't know or link them to</p> <p>8 anything actual.</p> <p>9 Q. Well, when you had an opportunity to comment</p> <p>10 on this beforehand, did you say -- did you tell</p> <p>11 Mr. Gregory anything about this?</p> <p>12 MS. JACOBSEN: Objection to form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. No, it was his presentation. I was just the</p> <p>15 mediator.</p> <p>16 BY MR. SCHIRMER:</p> <p>17 Q. Then you said the UEP Certified Program then</p> <p>18 develops policy to prohibit backfilling cages. Is</p> <p>19 that your understanding, is that at UEP Certified</p> <p>20 Program developed a policy to prohibit backfilling</p> <p>21 cages?</p> <p>22 A. Yes.</p> <p>23 Q. And he said the market now reflects the</p> <p>24 benefits of that policy. Is that consistent with</p>
<p style="text-align: right;">Page 167</p> <p>1 with your recollection of the market at -- egg market</p> <p>2 at that time?</p> <p>3 MS. JACOBSEN: Objection to form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. My recollection is that it was a nine-month</p> <p>6 period during that time.</p> <p>7 BY MR. SCHIRMER:</p> <p>8 Q. The next says, "To take advantage of good</p> <p>9 prices, producers elected to backfill empty cages."</p> <p>10 What does that mean, sir?</p> <p>11 MR. DAVIS: Objection to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. What that means is that through the normal</p> <p>14 course of mortality which occurs during a hen's life,</p> <p>15 just like in a human's life, if there were open spots</p> <p>16 in the cages, the producers -- some producers would</p> <p>17 go back and fill in up to their allotted -- allotted</p> <p>18 cage space allowance to be able to generate</p> <p>19 additional production.</p> <p>20 Q. And Mr. Gregory then writes, "This added</p> <p>21 several million hens to the nation's flock inventory</p> <p>22 and was a major reason we destroyed good prices." Do</p> <p>23 you see that, sir?</p> <p>24 A. I do.</p>	<p style="text-align: right;">Page 169</p> <p>1 your understanding of the market at that time in</p> <p>2 2008?</p> <p>3 MS. JACOBSEN: Objection to form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. That's consistent with Gene's opinion and he</p> <p>6 was always promoting the UEP.</p> <p>7 MR. SCHIRMER: Why don't we take a break.</p> <p>8 THE VIDEOGRAPHER: We are going off the</p> <p>9 video record at 3:06 p.m.</p> <p>10 (A short break was taken.)</p> <p>11 THE VIDEOGRAPHER: We are back on video</p> <p>12 record at 3:15 p.m.</p> <p>13 BY MR. SCHIRMER:</p> <p>14 Q. Do you have an understanding of something</p> <p>15 called Project Roll?</p> <p>16 A. Yes, I do.</p> <p>17 Q. What was Project Roll?</p> <p>18 A. Project Roll was the -- the code name for</p> <p>19 our -- our efforts to execute an IPO, a public stock</p> <p>20 offering in 2008 for Moark.</p> <p>21 Q. And I take it that didn't come off?</p> <p>22 A. Didn't come off.</p> <p>23 MR. SCHIRMER: 37.</p> <p>24 (Exhibit No. 37 was marked as requested.)</p>

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<p style="text-align: right;">Page 170</p> <p>1 BY MR. SCHIRMER:</p> <p>2 Q. This is Exhibit 37. This is a document --</p> <p>3 Exhibit 37 is a document bearing Bates Nos.</p> <p>4 MOARK0025032 and another document that was the</p> <p>5 attachment to the previous document that was produced</p> <p>6 as MOARK0025034 printed in native form.</p> <p>7 Do you remember this document</p> <p>8 Mr. Willardson?</p> <p>9 A. I do.</p> <p>10 Q. Who is Keith Short at KPMG?</p> <p>11 A. He was the partner on the project.</p> <p>12 Q. KP was -- was KPMG Moark's auditor at the</p> <p>13 time?</p> <p>14 A. They had just become Moark's auditor that</p> <p>15 year, 2008. They were Land O' Lakes' auditor for</p> <p>16 years prior.</p> <p>17 Q. Who had been Moark's auditor in previous</p> <p>18 years?</p> <p>19 A. Morris Stevens & Press out of Arkansas.</p> <p>20 They are an agricultural CPA firm.</p> <p>21 Q. Where was Mr. Short based?</p> <p>22 A. He was based in Southern California.</p> <p>23 Q. We should probably have a look at the</p> <p>24 management presentation. The first one is an e-mail</p>	<p style="text-align: right;">Page 172</p> <p>1 presentations on a traditional IPO road show. This</p> <p>2 was -- this was to be used.</p> <p>3 Q. And you were intending to have yourself,</p> <p>4 Mr. Dent --</p> <p>5 A. Wait, excuse me. Pardon me. May I back up?</p> <p>6 Q. Yes.</p> <p>7 A. This is actually -- I needed to review that</p> <p>8 subject again. This is a Moark analyst presentation,</p> <p>9 so this was not for the -- the IPO directly, this was</p> <p>10 for the -- the investment analyst, the New York</p> <p>11 investment analyst that -- to participate in the IPO</p> <p>12 process, so we did actually make this presentation.</p> <p>13 Q. Thank you for clarifying that.</p> <p>14 And you, Mr. Dent, Mr. Hodges, and Mr. Kil</p> <p>15 made presentations?</p> <p>16 A. Yes.</p> <p>17 Q. And obviously since you were making this</p> <p>18 presentation presenting it to analysts as preparatory</p> <p>19 for a road show, you tried to make the information as</p> <p>20 accurate as you could at the time?</p> <p>21 A. Yes.</p> <p>22 Q. Now would you turn to page six, please?</p> <p>23 There is a -- it says a unique scaleable platform.</p> <p>24 The -- there are five bullet points, but I'm</p>
<p style="text-align: right;">Page 171</p> <p>1 from Craig Willardson to Mr. Short dated Monday</p> <p>2 September 22, 2008, at 1:59 p.m. is that right?</p> <p>3 A. Yes, that's correct, Pacific time.</p> <p>4 Q. And it attaches the Project Roll analyst</p> <p>5 presentation final PPP. That's PowerPoint?</p> <p>6 A. Yes.</p> <p>7 Q. It says, "As discussed our business review</p> <p>8 presentation is attached. Thank you for your</p> <p>9 feedback." Had he had a look at this before?</p> <p>10 A. Had he looked at it before?</p> <p>11 Q. Uh-huh.</p> <p>12 A. I don't remember.</p> <p>13 Q. Why were you forwarding this to Mr. Short?</p> <p>14 Was the IPO --</p> <p>15 A. It was still a go in September.</p> <p>16 Q. When did it cancel?</p> <p>17 A. Early 2009 after the market collapsed.</p> <p>18 Q. Let's go to the Moark business overview.</p> <p>19 There's a -- on page three, once again, this has page</p> <p>20 numbers in the lower left-hand corner in tan. You</p> <p>21 can take that off.</p> <p>22 It says today's presenters. Did you make a</p> <p>23 presentation using this -- this document?</p> <p>24 A. We did not get to the point of making</p>	<p style="text-align: right;">Page 173</p> <p>1 interested in two of them. It says you are the</p> <p>2 largest marketer of specialty eggs. What did you</p> <p>3 mean by that?</p> <p>4 A. That we sold by volume more specialty eggs</p> <p>5 than anyone else in the country. That was a focal</p> <p>6 point for the company.</p> <p>7 Q. And you were the second largest marketer of</p> <p>8 shell eggs in the United States at that time?</p> <p>9 A. Yes.</p> <p>10 Q. It says so right here.</p> <p>11 A. We were.</p> <p>12 Q. And you tried to tell them what was going</p> <p>13 on?</p> <p>14 A. I think we lost that title later on, that's</p> <p>15 why I hesitated.</p> <p>16 Q. Okay. And when you say you are a leading</p> <p>17 integrated marketer, distributor, and producer of</p> <p>18 fresh shell eggs, are you referring to Moark as an</p> <p>19 integrated company in the way you and I discussed</p> <p>20 earlier?</p> <p>21 A. Yes.</p> <p>22 Q. Now the next page talks about an industry</p> <p>23 leading product portfolio, and you have regular eggs</p> <p>24 and specialty eggs, and the first bullet point under</p>

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<p style="text-align: right;">Page 174</p> <p>1 regular shell eggs is that includes all white and</p> <p>2 brown eggs in various grades and sizes other than</p> <p>3 specialty sizes. So is it my understanding that</p> <p>4 Moark did not consider brown eggs a specialty egg?</p> <p>5 A. A regular brown egg without any other</p> <p>6 attribute, that's correct.</p> <p>7 Q. That would generally -- the prices for that,</p> <p>8 those eggs sold by Moark would generally be based on</p> <p>9 the Urner-Barry index?</p> <p>10 A. Yes.</p> <p>11 Q. I just wanted to make sure that applied.</p> <p>12 Okay. And that is accurate that the prices</p> <p>13 are generally -- it says prices based upon the</p> <p>14 Urner-Barry index of wholesale prices for shell eggs.</p> <p>15 That means generally I take it, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Would you have a look at page 19, lower</p> <p>18 left-hand corner? In the top in the box, I guess</p> <p>19 it's -- I don't know what color it is, probably tan,</p> <p>20 it says the strength of our relationships is</p> <p>21 evidenced by the fact that many of our customers have</p> <p>22 chosen us to be their regional category captains or</p> <p>23 leaders. What is a category captain?</p> <p>24 A. It's a nice marketing term to demonstrate</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. And you sold a substantial number of eggs to</p> <p>2 Safeway at that time?</p> <p>3 A. Yes.</p> <p>4 Q. They were the tenth largest customer.</p> <p>5 On page 21, once again you talk about Moark</p> <p>6 as a vertically integrated platform. That's the same</p> <p>7 type of vertical integration we discussed earlier</p> <p>8 today?</p> <p>9 A. Yes.</p> <p>10 Q. The next page lists Moark's management team,</p> <p>11 an experienced management team, it says at the top.</p> <p>12 Jerry Kil was the vice president of operations when</p> <p>13 this was done in 2008?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know whether -- was Mr. Kil the vice</p> <p>16 president of operations -- I've forgotten the answer</p> <p>17 was Mr. Kil the vice president of operations during</p> <p>18 the entire time you were the CEO of Moark?</p> <p>19 A. No, he cutback on his hours in 2011, and</p> <p>20 Jeff Fowler became our vice president of operations.</p> <p>21 Jerry still works for the company today. But he</p> <p>22 switched roles at his request.</p> <p>23 Q. Was -- what was his title starting in 2011?</p> <p>24 A. Director of egg trading.</p>
<p style="text-align: right;">Page 175</p> <p>1 that we advise them in our category, the egg</p> <p>2 category, and that was the case with someone like</p> <p>3 Kroger where we would come in and offer our services</p> <p>4 to the -- to the organization, whether or not they</p> <p>5 accepted it or adopted it, that's a different story,</p> <p>6 but -- but it meant they looked to us for their egg</p> <p>7 input.</p> <p>8 Q. And CFF Browns that's the broker that bought</p> <p>9 for Walmart?</p> <p>10 A. Correct.</p> <p>11 Q. Do you recall whether Moark served as a</p> <p>12 category captain for any of these other companies?</p> <p>13 Obviously you didn't for Cal Maine Foods because</p> <p>14 that's another producer.</p> <p>15 A. Super Value we had a -- the strong category</p> <p>16 role with them and Associated Wholesale Grocers, we</p> <p>17 handled the majority of their business so we would</p> <p>18 have been a manager or captain in that group.</p> <p>19 Q. Now it's the eighth -- third from the bottom</p> <p>20 of the top ten customers is Cal Maine Foods. What</p> <p>21 does this refer to? Did you sell Cal Maine directly,</p> <p>22 \$18 million worth of sales, I guess?</p> <p>23 A. That should be the sales that go from our</p> <p>24 joint venture partnership to Cal Maine for Walmart.</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. And what is the director of egg trading do?</p> <p>2 A. That's the one who -- it's a pretty critical</p> <p>3 function to the organization. It takes an</p> <p>4 experienced guy like Jerry. That's the -- the</p> <p>5 acquisition of eggs from outside sources for us and</p> <p>6 helping balance inventories. Things that he was</p> <p>7 really good at.</p> <p>8 Q. On page 23, the next page, is it your -- it</p> <p>9 says on -- limited consolidation efforts are being</p> <p>10 led by the larger shell egg producers. What did</p> <p>11 Moark mean when it said limited consolidation</p> <p>12 efforts?</p> <p>13 A. What that meant was the -- the consolidation</p> <p>14 or acquisition was not -- was not that heavy at this</p> <p>15 point in time, but it was being led by companies like</p> <p>16 Cal Maine and Moark and Rose Acres, so very few in</p> <p>17 numbers in -- in what we know to be a very fragmented</p> <p>18 industry.</p> <p>19 Q. So 65 producers on a million hens or more</p> <p>20 representing 90 percent of total layers, that's</p> <p>21 consistent with your understanding of the market at</p> <p>22 that time?</p> <p>23 A. It is, absolutely.</p> <p>24 Q. Please turn to page 28. Is it your</p>

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<p style="text-align: right;">Page 178</p> <p>1 understanding that at this time that demand for --</p> <p>2 the retail demand for eggs remained stable during</p> <p>3 periods of relatively high prices?</p> <p>4 A. Yeah, eggs -- we've seen eggs be relatively</p> <p>5 inelastic over time.</p> <p>6 Q. And then you list a number of factors that</p> <p>7 have caused supply to decline. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And that was accurate as of the date this</p> <p>10 was -- you made your presentation?</p> <p>11 A. That's it.</p> <p>12 Q. And it says, "These factors should sustain</p> <p>13 higher egg prices than the historical average through</p> <p>14 Moark's long range planning period." What was</p> <p>15 Moark's long range planning period at that time?</p> <p>16 A. We did three-year long range plans.</p> <p>17 Q. What did you mean when you said eggs are</p> <p>18 generally considered to be recession proof at the top</p> <p>19 up there?</p> <p>20 A. It's a stable commodity. Everybody eats</p> <p>21 eggs and milk and butter and bread, and it will</p> <p>22 continue to be, and it's a far more affordable</p> <p>23 protein than other options during -- during high</p> <p>24 commodity prices from beef and fish and different</p>	<p style="text-align: right;">Page 180</p> <p>1 A. In part. We actually -- by the time I left,</p> <p>2 we had done quite a bit of extra building and</p> <p>3 expanding.</p> <p>4 Q. By the time you left was 2013?</p> <p>5 A. Yeah.</p> <p>6 Q. Okay. And then so this is your forecast in</p> <p>7 what the shortfall in layers over what you would --</p> <p>8 shortfall in layers is going to be?</p> <p>9 MS. JACOBSEN: Objection to form.</p> <p>10 BY MR. SCHIRMER:</p> <p>11 Q. Well, it says estimated capacity shortfall</p> <p>12 in 2009, right?</p> <p>13 A. Yes.</p> <p>14 Q. And that's your -- that's Moark's estimate?</p> <p>15 A. Moark's estimate. Not a very significant</p> <p>16 percentage. I haven't seen this for a while, it's</p> <p>17 just --</p> <p>18 Q. Expected to keep the supply tight. I think</p> <p>19 that's enough for this one.</p> <p>20 Let's go back to No. 36, the Moark long</p> <p>21 range growth plan. Now do you recall that that is</p> <p>22 MOARK38005 and 38006 and it's a longer document,</p> <p>23 38006. Earlier today I asked you about long range</p> <p>24 growth plans. Do you remember that?</p>
<p style="text-align: right;">Page 179</p> <p>1 things.</p> <p>2 Q. Would you look at page 30 for just a minute?</p> <p>3 Page 30 says, "Supply is expected to remain tight."</p> <p>4 It says, "The U.S. supply of egg layers is the</p> <p>5 expected to remain tight through 2009 as capacity</p> <p>6 reductions are expected to exceed planned capacity</p> <p>7 expansions," and then it gives a number where it</p> <p>8 says, "Estimated capacity shortfall in 2009 is 1.2."</p> <p>9 Is that 1.2 million layers? It's at the bottom --</p> <p>10 A. Yeah, that's 1.2 million layers in the</p> <p>11 national flock.</p> <p>12 Q. And right actual under egg layers, there is</p> <p>13 a statement that says EST, I assume that's estimated?</p> <p>14 A. Estimated.</p> <p>15 Q. Capacity reduction from UEP cage issues. Is</p> <p>16 that the institution of the final phase of the UEP</p> <p>17 cage space guidelines?</p> <p>18 A. That would be the final phase.</p> <p>19 Q. Where --</p> <p>20 A. And as you can see we were adding 12 million</p> <p>21 anticipated. We, members of the industry, Moark, and</p> <p>22 others.</p> <p>23 Q. Was that done through acquisitions, at least</p> <p>24 in part?</p>	<p style="text-align: right;">Page 181</p> <p>1 A. Yes.</p> <p>2 Q. And you said these are created for Moark's</p> <p>3 management and for presentations to the board of</p> <p>4 Land O' Lakes?</p> <p>5 A. Yes.</p> <p>6 Q. And is that what this document was created</p> <p>7 for?</p> <p>8 A. Yes, it is.</p> <p>9 Q. Do you recall whether this was ever</p> <p>10 presented to the Land O' Lakes board?</p> <p>11 A. I can't say if this is a final version, but</p> <p>12 we did present for 2008 to '12.</p> <p>13 Q. On the first page, 3000 -- 38005, Matt</p> <p>14 Gentry writes he's made a few changes from what --</p> <p>15 the one I sent earlier, and then the last sentence</p> <p>16 is, "I think a call before the 1:00 p.m. CST</p> <p>17 conference call would be good." Do you know what he</p> <p>18 was referring to when he talked about the 1:00 p.m.</p> <p>19 CST conference call?</p> <p>20 A. It would have been an internal conference</p> <p>21 call where we reviewed the plan prior to any</p> <p>22 presentation.</p> <p>23 Q. The question is -- I'm confused by the</p> <p>24 wording, maybe. It says, "I think a call before the</p>

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<p style="text-align: right;">Page 182</p> <p>1 1:00 p.m. CST conference call," so do you know what 2 he was referring to when he -- when he's talking 3 about the 1:00 p.m. CST conference call? 4 A. No, I don't. 5 Q. And this was prepared by Moark's staff and 6 you were ultimately responsible for its content, is 7 that right, sir? 8 A. Yes. 9 Q. Now would you go to, I think it's the fourth 10 page of the larger document on industry background 11 and supply, and there a list of Moark, LLC, State of 12 Missouri layers on 22 million -- number of layers 13 marketed and number of layers owned 11,300,000. 14 That's consistent with the other document earlier 15 that showed that Moark, at approximately this point 16 in 2008, had 11,300,000 layers, is that right? 17 MS. JACOBSEN: Objection to form. 18 BY MR. SCHIRMER: 19 Q. It went from 13 million some to 11,300,000 20 some? 21 A. Was it for -- yes, it's consistent. 22 Q. That last one, Fort Recover Equity, that's 23 the joint venture in Ohio? 24 A. Yes.</p>	<p style="text-align: right;">Page 184</p> <p>1 67.4 square inches per bird. Is that consistent with 2 your understanding of what was going to happen in 3 2008 when the Animal Care Certification Program was 4 fully implemented? It's the second bullet point. 5 A. Right. I assume that's referring to the 6 entire life of the program. It says 11 inches. 7 Q. It says -- the next thing it says is, "The 8 program removed approximately 57 million birds from 9 the industry." Is that right, sir? 10 A. I don't know where that number came from, 11 I'll be honest with you. 12 Q. Who wrote this? 13 A. Our CFO. 14 Q. The next point is that capital expenditures 15 require for compliance impose new barriers. What did 16 you mean by that? 17 A. Again, the barriers to entry. That's the 18 capital requirement, to have somebody willing to 19 spend 6 to \$8 per chicken or build new for 20 to \$30 20 to be able to grow and to expand. 21 Q. Now the program removed approximately 57 22 million birds from the industry, but this is part of 23 the -- your long range growth plan that would be 24 information you would present to the board?</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. Go to the sixth page for a minute, please. 2 Page six of this document. It talks about industry 3 background and supply issues. The first point after 4 number one is United Egg Producers Animal Care 5 Certification Program. What was that referring to, 6 sir? 7 A. Would have been referring to the final phase 8 in of the animal care program, cage space allowance. 9 Q. Sorry, I didn't mean to -- sorry, I 10 interrupted. 11 What is four, barriers to entry? 12 A. Barriers to entry refers to the difficulty 13 and the capital required just to enter the egg 14 business. Normal things that -- for any industry 15 that you're challenged with to be a new player. 16 Q. Look at the next page. It looks at the 17 Animal Care Certification Program. It says it's a 18 voluntary program operated by the industry's largest 19 -- adopted by the industry's largest consumers. 20 That's consistent with your understanding at the 21 time, the first bullet point under number one? 22 A. It really should say producers. 23 Q. Okay. It says an increase cage -- it should 24 say cage space per layer -- by 11.3 square inches to</p>	<p style="text-align: right;">Page 185</p> <p>1 A. Apparently this is a draft, based on the 2 number of typos we've found so far. 3 Q. Maybe. Do you remember if that was removed 4 from any of the drafts? 5 A. No, I don't. I do not recognize that 6 number, I'll say that. 7 Q. But this was drafted by your CFO. Do you 8 know where he got the number? 9 A. No. 10 Q. Would you look at -- it's a couple pages 11 later it says, "Industry background supply issues, 12 equipment age." Do you see that? Equipment age. 13 A. Yes. 14 Q. It says, "A terrible market kept production 15 at a minimum." That's what you were talking about 16 when you're not making any money, you don't invest 17 money? 18 A. You don't spend. 19 Q. Okay. Second, the UEP guidelines, it says, 20 "A-frame high rise systems per bird, \$5 per bird, 21 versus stacked deck or scraper board system at \$12 22 per bird. What -- I don't understand what that 23 means. 24 A. It meant that as we were shifting towards a</p>

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<p style="text-align: right;">Page 186</p> <p>1 better, more animal care friendly system, such as we 2 looked at earlier, 67 square inches of stacked deck 3 is just a lot more expensive than a classic high rise 4 system, high rise, deep-pit referred to earlier. So 5 that's difficult for some producers to front that 6 money. 7 Q. \$12 per bird, some of these chicken houses 8 might have, what, 200,000 birds in them? 9 A. An individual house can have 200,000 birds. 10 A complex might be 1 million, 2 million, 3 million. 11 Q. The next page talks about barriers to entry. 12 See that? It says supply -- industry background 13 supply issues, barriers to entry. What -- what does 14 it mean when it says ever-increasing environmental 15 laws and regulations? 16 A. Pretty much what it -- what it says there. 17 For those that want to enter the industry, they are 18 going to be facing more regulation, more cost, more 19 government compliance, and for some of the smaller 20 producers, it's just not an efficient way to get into 21 the business. 22 Q. And one of the other points is difficulty in 23 obtaining new permits for newer expanded facilities. 24 We've already talked about that.</p>	<p style="text-align: right;">Page 188</p> <p>1 specialty, because we had predictable profit margins 2 for specialty eggs and didn't have to suffer through 3 the ups and downs of the commodity market. 4 Q. Who set the prices at which Moark would sell 5 its specialty eggs to its customers? 6 A. That would be done by our sales group, and 7 if it was part of a bid for a large customer, we 8 would have a management team involved in the bid 9 review process, which would include the specialty 10 eggs, but for the most part would be Bob Hodges and 11 his group working with the finance department. 12 Q. The finance department would be people who 13 worked for Mr. Dent or Mr. -- 14 A. Yeah, or Mr. Dicks later on. 15 Q. Would you have a look at the -- where there 16 is -- I can't tell the color of this. It says 17 industry background demand issues and U.S. population 18 egg consumption. 19 A. Yeah. 20 Q. It shows average -- or annual egg 21 consumption per person is on the left side, and then 22 the years on the bottom. It's a chart, is that 23 right, sir? 24 A. Yes.</p>
<p style="text-align: right;">Page 187</p> <p>1 A. We have. 2 Q. I don't understand dramatically changing 3 economy of scale, 2,500,000 hen complexes compared to 4 500,000. What is that referring to? 5 A. It means if you want to be competitive, if 6 you want to be able to serve our growing customer 7 base, you have to be positioned to where you have 8 much larger complexes, more efficient complexes to 9 compete, and to serve the Albertson's and Krogers and 10 Costcos of the country. 11 Q. Take a look at industry background, demand 12 issues for a minute. The fifteenth page, it looks 13 like this. The first point is population growth and 14 we have already talked about that. As population 15 grows you tend -- as I understand your testimony, you 16 tend to see about a one percent growth per year. 17 A. Mm-hmm. 18 Q. The third point is shift from commodity to 19 specialty. What do you mean by that, sir? 20 A. What we meant by that was that the specialty 21 egg sector was growing faster than the one percent, 22 so for us to be able to keep up with that, we had to 23 understand the demand issue. In fact, that was our 24 intent; that was part of our plan, to focus on</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. And this is a -- and to the best of Moark's 2 -- of your ability, you were trying to accurately 3 portray the annual number of shell eggs consumed over 4 time per capita. The total eggs consumed and the 5 liquid egg equivalent consumed over a period 2000 to 6 -- at what you projected through 2012. 7 A. Yes. 8 Q. You just said something about the shift to 9 specialty eggs and I want to make sure I understand. 10 You said there are more predictable profit margins. 11 Is that because it's based upon the cost of 12 production plus a specified margin? 13 A. Yes, it is, and it's not subject to the 14 Urner-Barry price fluctuations. 15 MR. SCHIRMER: Let's take a three-minute 16 break. I may be done. 17 THE VIDEOGRAPHER: We are going off the 18 video record at 3:47 p.m. 19 (A short break was taken.) 20 THE VIDEOGRAPHER: We are back on the video 21 record at 3:53 p.m. 22 MR. SCHIRMER: Mr. Willardson, subject to 23 cross examination by your counsel and everybody else, 24 I only have a couple more questions, okay?</p>

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<p style="text-align: right;">Page 190</p> <p>1 BY MR. SCHIRMER:</p> <p>2 Q. I'm showing you what has been marked as</p> <p>3 Exhibit 38 to your deposition. It bears Bates Nos.</p> <p>4 MOARK-IPP-0036451 through 454. What is it?</p> <p>5 A. It is an e-mail from me to Don Dent and Dan</p> <p>6 Knutson dated June 29, 2008, regarding the Egg</p> <p>7 Industry June edition.</p> <p>8 Q. And you said Don, in the e-mail right below</p> <p>9 it -- excuse me, there is an e-mail from Don Dent to</p> <p>10 you and Mr. Knutson on the same subject matter, is</p> <p>11 that right?</p> <p>12 A. Right, it's Don asking...</p> <p>13 Q. What is IB analyst?</p> <p>14 A. Invest bankers/analyst, so the same group we</p> <p>15 referred to before where we made a presentation.</p> <p>16 Q. Do you know whether there was ever sent to</p> <p>17 the investment bankers and analyst, the article that</p> <p>18 he is attaching to this?</p> <p>19 A. I don't.</p> <p>20 Q. Who could I -- is Mr. Dent the only one I</p> <p>21 could ask to find that out?</p> <p>22 A. Most likely, or the investment bankers.</p> <p>23 Q. And that's -- that's the folks at AGIO</p> <p>24 Helms?</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Was the UEP Certified Program developed in</p> <p>2 any way to restrict the supply of eggs in the market?</p> <p>3 A. No.</p> <p>4 Q. What is your understanding of how the</p> <p>5 requirements of the certified program were developed?</p> <p>6 A. They were developed by a group of -- an</p> <p>7 independent group consisting of UEP members,</p> <p>8 retailers, animal welfare representatives, and</p> <p>9 industry scientists such as Don Bell and others.</p> <p>10 Q. And were the requirements of the UEP</p> <p>11 Certified Program publicly available?</p> <p>12 A. Yes, they were.</p> <p>13 Q. Did the UEP Certified Program in any way</p> <p>14 limit a producer's ability to expand its production</p> <p>15 facilities?</p> <p>16 A. No.</p> <p>17 Q. To your knowledge, was there any agreement</p> <p>18 among producers not to expand their production</p> <p>19 facilities after the program was implemented?</p> <p>20 A. No.</p> <p>21 Q. And to your knowledge, did Moark expand its</p> <p>22 production facilities after the program was</p> <p>23 implemented?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 191</p> <p>1 A. Yeah.</p> <p>2 Q. Okay. I don't think you want me really to</p> <p>3 ask AGIO Helms about that, do you.</p> <p>4 MR. SCHIRMER: All right, subject to further</p> <p>5 -- any cross examination that other counsel may have</p> <p>6 I think I'm done.</p> <p>7 MS. JACOBSEN: Does anybody on the phone</p> <p>8 have any questions?</p> <p>9 MR. SCHWINGLER: This is Pete Schwingler. I</p> <p>10 don't have any.</p> <p>11 MR. HEADLUND: Dan Headlund for direct</p> <p>12 purchaser plaintiffs. I don't have any questions.</p> <p>13 MR. DAVIS: Evan Davis, no questions.</p> <p>14 MS. SANDIN: Jetta Sandin, no questions.</p> <p>15 MS. JACOBSEN: I have just a very few</p> <p>16 following up on what Mr. Schirmer has discussed with</p> <p>17 you throughout the day and he may or may not have any</p> <p>18 questions after that.</p> <p>19 EXAMINATION</p> <p>20 BY MS. JACOBSEN:</p> <p>21 Q. Mr. Schirmer asked you about the UEP</p> <p>22 Certified Program. Do you remember those</p> <p>23 discussions?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. What is your understanding of why the UEP</p> <p>2 Certified Program was phased in over several years?</p> <p>3 A. It was phased in over several years to</p> <p>4 accommodate the -- the sustainability of the hen</p> <p>5 production, not jolt the market or the producers. It</p> <p>6 was more animal friendly that way. It was more</p> <p>7 efficient.</p> <p>8 Q. Mr. Schirmer also asked you a few questions</p> <p>9 about the certified program's prohibition of</p> <p>10 backfilling. Do you remember those questions?</p> <p>11 A. Yes, I do.</p> <p>12 Q. What is your understanding of why the UEP</p> <p>13 Certified Program banned that practice?</p> <p>14 A. First, it's not good animal husbandry to</p> <p>15 introduce birds from a different flock, subject to</p> <p>16 disease and other factors, into an existing lay</p> <p>17 house, and it's just -- I mean, it's good -- it's</p> <p>18 good practice if we are going to maintain the</p> <p>19 integrity of an animal welfare program to truly</p> <p>20 follow it as it was intended to be done.</p> <p>21 Q. To your understanding was the ban on</p> <p>22 backfilling in the UEP Certified Program put in place</p> <p>23 in order to reduce the supply of eggs?</p> <p>24 A. No.</p>

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<p style="text-align: right;">Page 194</p> <p>1 Q. Did Moark backfill prior to the ban on 2 backfilling in the UEP Certified Program? 3 A. No. 4 Q. Did Moark ever alter its own egg production 5 decisions based on any UEP recommendation? 6 A. No, we did that independent of the UEP 7 recommendations. 8 Q. Did Moark ever refrain from increasing its 9 production of eggs because of some UEP 10 recommendation? 11 A. No. 12 Q. During the period of time that you were 13 employed by Moark, do you have a belief that UEP was 14 a Capper-Volstead cooperative? 15 A. Yes. 16 Q. Did you hold a similar belief that USEM was 17 a Capper-Volstead cooperative? 18 A. Yes, I did. 19 Q. During the period of time that you were 20 employed by Moark, did you, at any time, agree with 21 any competitor on the price to be charged for eggs? 22 A. No. 23 Q. And during the period of time that you were 24 employed by Moark, did you, at any time, agree with</p>	<p style="text-align: right;">Page 196</p> <p>1 MS. JACOBSEN: Objection to form. 2 BY THE WITNESS: 3 A. I don't know. 4 BY MR. SCHIRMER: 5 Q. You might want to agree not to increase 6 production of eggs with your competitors? Why 7 wouldn't you do that if it were legal? 8 MS. JACOBSEN: Objection to form. 9 BY THE WITNESS: 10 A. If it were legal -- that's hypothetical. I 11 don't know. 12 BY MR. SCHIRMER: 13 Q. Well, why didn't do you it? 14 A. Just wasn't a practice. 15 Q. Wouldn't that help reduce the pressure -- or 16 downward pressure on the price of eggs? 17 MS. JACOBSEN: Objection to form. 18 BY THE WITNESS: 19 A. It might or might not. 20 BY MR. SCHIRMER: 21 Q. Assuming demand is relatively stable, 22 wouldn't that help reduce the downward pressure on 23 eggs, on the price of eggs? 24 BY THE WITNESS:</p>
<p style="text-align: right;">Page 195</p> <p>1 any competitor to limit the production of eggs? 2 A. No. 3 Q. And at any point during the period of time 4 that you were employed by Moark, did you agree with 5 any competitor not to increase your production of 6 eggs? 7 A. No. 8 MS. JACOBSEN: I have no further questions. 9 FURTHER EXAMINATION 10 BY MR. SCHIRMER: 11 Q. Why wouldn't you agree with one of your 12 competitors not to reduce the supply of eggs? 13 A. It's part of the training we had, not to 14 have those kinds of discussions with our competitors. 15 Q. Which training? 16 A. Our antitrust training. 17 Q. It would be illegal, wouldn't it? 18 MS. JACOBSEN: Objection to form. 19 BY THE WITNESS: 20 A. Yeah. 21 BY MR. SCHIRMER: 22 Q. And for the same reason, that's the reason 23 why you wouldn't agree directly with your competitors 24 not to increase production of eggs?</p>	<p style="text-align: right;">Page 197</p> <p>1 A. It could. 2 MS. JACOBSEN: Objection to form. 3 4 BY MR. SCHIRMER: 5 Q. You said you held the belief that USEM was a 6 Capper-Volstead cooperative. On what was that based? 7 A. Based on the fact that they had an attorney 8 present at their meetings and directing things and 9 that the members -- let me back up. I was not 10 directly on the committee, I didn't serve, I wasn't a 11 representative there, but my understanding was that 12 all the members were properly certified and that it 13 was under the direction of a UEP attorney. I didn't 14 have any reason to think otherwise. 15 Q. You said that you never agreed on prices for 16 eggs, other than what -- pursuant to joint venture 17 agreements. 18 A. Right. 19 Q. And so during those, you obviously would 20 agree with whoever was your joint venture -- 21 A. It was business. We had to. 22 Q. Okay. And obviously you agreed when you 23 were buying and selling -- buying eggs from another 24 -- another producer, you would agree on the price of</p>

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<p style="text-align: right;">Page 198</p> <p>1 those eggs?</p> <p>2 A. Right, and the price of the eggs to transfer</p> <p>3 from wholesale to warehouse to warehouse.</p> <p>4 Q. Now let's go back to the first couple</p> <p>5 questions Ms. Jacobsen asked you. You said -- you</p> <p>6 said something about you understood that the UEP</p> <p>7 program was developed -- not developed in any way to</p> <p>8 -- with regard to reduce supply. Is that -- that was</p> <p>9 what you testified just a minute ago?</p> <p>10 A. Yes.</p> <p>11 Q. Were you a member of any of the UEP</p> <p>12 committees that dealt with egg marketing prior to</p> <p>13 2006?</p> <p>14 A. No.</p> <p>15 Q. Were you a member of the animal -- committee</p> <p>16 on animal welfare prior to 2006?</p> <p>17 A. No.</p> <p>18 Q. Did you attend a number of UEP meetings</p> <p>19 prior to the year 2000?</p> <p>20 A. Prior to --</p> <p>21 Q. 2000.</p> <p>22 A. No.</p> <p>23 Q. Do you remember attending any UEP meetings</p> <p>24 between say 1996 and 2002?</p>	<p style="text-align: right;">Page 200</p> <p>1 meetings back then as a non-committee member, so I</p> <p>2 don't remember.</p> <p>3</p> <p>4 BY MR. SCHIRMER:</p> <p>5 Q. Okay. You then said something about your</p> <p>6 understanding of the development of the Animal Care</p> <p>7 Certification Program.</p> <p>8 A. Yes.</p> <p>9 Q. And you said you understood it had been</p> <p>10 developed and there were retailers involved?</p> <p>11 A. There were retail representatives, I</p> <p>12 believe, from FMI.</p> <p>13 Q. On what committee?</p> <p>14 A. On the group that developed the -- the</p> <p>15 animal care certified standards.</p> <p>16 Q. Where did you gain that understanding?</p> <p>17 A. Speaking from memory. I don't recall</p> <p>18 exactly where that came from.</p> <p>19 Q. And did you say animal welfare groups were</p> <p>20 recommended?</p> <p>21 A. There was a specialist on the committee.</p> <p>22 Q. Do you remember who that was?</p> <p>23 A. No.</p> <p>24 Q. Do you have an understanding of what the</p>
<p style="text-align: right;">Page 199</p> <p>1 A. I remember a meeting in 1999 that I attended</p> <p>2 as an observer. Yes, I did attend a UEP meeting in</p> <p>3 '99.</p> <p>4 Q. Did Don Bell make a presentation that</p> <p>5 meeting in 1999?</p> <p>6 A. He might have. That's 15 years ago.</p> <p>7 Q. You don't remember the substance of that</p> <p>8 presentation?</p> <p>9 A. No.</p> <p>10 Q. And you were not privy to any of the</p> <p>11 committee -- the thoughts of the committee members</p> <p>12 prior to becoming a committee member in 2006?</p> <p>13 A. If I would have attended as an observer, I</p> <p>14 would have heard their thoughts and what the</p> <p>15 discussion was.</p> <p>16 Q. Then you heard Mr. Bell, if Mr. Bell made a</p> <p>17 presentation, discussing the need for increased cage</p> <p>18 space in order to manage supply? You would have</p> <p>19 heard that 1999 meeting, wouldn't you?</p> <p>20 A. Was it made to the entire --</p> <p>21 MS. JACOBSEN: Objection to form. Go ahead.</p> <p>22 BY THE WITNESS:</p> <p>23 A. Was it made to the entire body or was it</p> <p>24 just one of the committees? I attended the general</p>	<p style="text-align: right;">Page 201</p> <p>1 scientific -- what was called the independent</p> <p>2 scientific committee was in -- UEP's independent</p> <p>3 scientific advisory committee is, I think, the way</p> <p>4 they described it?</p> <p>5 A. I have a general understanding. I wasn't</p> <p>6 involved in the development of the animal care</p> <p>7 program, wasn't part of the UEP back in 2000 or 2006.</p> <p>8 Q. So it may well be that retailers were not</p> <p>9 included on the producer committee for animal welfare</p> <p>10 that wrote ACC guidelines, animal care certification</p> <p>11 guidelines?</p> <p>12 A. For some reason it sticks out in my mind</p> <p>13 that they had some input into the process for the --</p> <p>14 for the development of the guidelines.</p> <p>15 Q. You were not a member of the animal welfare</p> <p>16 committee at the time?</p> <p>17 A. No.</p> <p>18 MS. JACOBSEN: Objection, asked and</p> <p>19 answered.</p> <p>20 BY MR. SCHIRMER:</p> <p>21 Q. Do you know whether the guidelines, as</p> <p>22 adopted, were the same or identical to the</p> <p>23 recommendations made by the independent scientific</p> <p>24 advisory committee?</p>

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<p>1 A. No, I don't.</p> <p>2 MR. SCHIRMER: I'm done.</p> <p>3 MS. JACOBSEN: I guess that's it.</p> <p>4 THE VIDEOGRAPHER: This concludes today's</p> <p>5 deposition. The time is now 4:06 p.m. and we are</p> <p>6 going off the video record at the end of video media</p> <p>7 three.</p> <p>8 (Deposition concluded.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 CERTIFICATE OF</p> <p>2 CERTIFIED SHORTHAND REPORTER</p> <p>3 I, Beth C. Radtke, a Certified Shorthand</p> <p>4 Reporter of the State of Illinois, CSR License No.</p> <p>5 084-004561, do hereby certify:</p> <p>6 That previous to the commencement of the</p> <p>7 examination of the aforesaid witness, the witness</p> <p>8 was duly sworn by me to testify the whole truth</p> <p>9 concerning the matters herein;</p> <p>10 That the foregoing deposition transcript was</p> <p>11 stenographically reported by me and was thereafter</p> <p>12 reduced to typewriting under my personal direction</p> <p>13 and constitutes a true and accurate record of the</p> <p>14 testimony given and the proceedings had at the</p> <p>15 aforesaid deposition;</p> <p>16 That I am not a relative or employee or attorney</p> <p>17 or counsel for any of the parties herein, nor am I</p> <p>18 interested directly or indirectly in the outcome of</p> <p>19 this action.</p> <p>20 IN WITNESS WHEREOF, I do hereunto set my hand at</p> <p>21 Chicago, Illinois, this 21st day of June, 2014.</p> <p>22</p> <p>23 _____</p> <p>24 Beth Radtke, C.S.R License No. 084-004561</p>																																				
<p style="text-align: right;">Page 203</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, CRAIG WILLARDSON, do hereby certify</p> <p>3 that I have read the foregoing transcript of my</p> <p>4 testimony taken on 6/6/14, and further certify</p> <p>5 that it is a true and accurate record of my</p> <p>6 testimony (with the exception of the corrections</p> <p>7 listed below):</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Page</th> <th style="width: 10%;">Line</th> <th style="width: 80%;">Correction</th> </tr> </thead> <tbody> <tr><td>9</td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> </tbody> </table> <p>20 _____</p> <p>21 CRAIG WILLARDSON</p> <p>22 SUBSCRIBED AND SWORN TO BEFORE ME</p> <p>23 THIS ____ DAY OF _____, 20__.</p> <p>24 (NOTARY PUBLIC) MY COMMISSION EXPIRES:</p>	Page	Line	Correction	9			10			11			12			13			14			15			16			17			18			19			
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